

No. 10506

United States *Vol*
Circuit Court of Appeals
For the Ninth Circuit. *2367*

GEORGE A. KOCH, Executor of the Estate of
ADOLPH J. KOCH, Deceased,
Petitioner,
vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of the Record

Upon Petition to Review a Decision of the Tax Court
of the United States

FILED

SEP 18 1943

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES

For Taxpayer:

GERALD S. CHARGIN, ESQ.

For Comm'r:

ARTHUR L. MURRAY, ESQ.

Docket No. 109007

GEORGE A. KOCH, AS EXECUTOR OF THE
ESTATE OF ADOLPH J. KOCH,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Amended Title

Estate of Adolph J. Koch, George Koch, Executor,
See order of 7-16-41.

DOCKET ENTRIES

1941

June 28—Petition received and filed. Taxpayer
notified. Fee not paid.

June 28—Copy of petition served on General Coun-
sel.

July 14—Fee paid—check.

July 16—Copy of petition served on General Coun-
sel.

July 11—Motion to amend caption filed by tax-
payer.

1941

July 16—Order that caption be amended to read estate of Adolph J. Koch, George Koch, executor entered.

Aug. 16—Amended petition filed. 8-19-41 copy served.

Sept. 3—Answer filed by General Counsel (to amended petition).

Sept. 3—Request for hearing in San Francisco, Calif. filed by General Counsel.

Sept. 5—Notice issued placing proceeding on San Francisco, Calif. calendar. Service of answer and request made.

1942

Oct. 12—Hearing set November 16, 1942 in San Francisco, California.

Nov. 21—Hearing had before Judge Mellott, on merits. Submitted. Withdrawal of Victor E. Cappa, Esq. filed. Appearance of Gerald S. Chargin, Esq. filed. Petitioners brief due 1-5-43, respondents 2-4-43, reply 2-19-43.

Nov. 21—Withdrawal of Victor E. Cappa filed at hearing. Granted.

Dec. 11—Notice of appearance of Gerald S. Chargin as counsel for taxpayer filed.

Dec. 10—Transcript of hearing 11-21-42 filed.

1943

Jan. 4—Motion for extension of time to Jan. 30, 1943, to file brief filed by taxpayer. 1-4-43 granted.

Jan. 12—Brief filed by taxpayer. 1-12-43 copy served on General Counsel.

1943

Feb. 6—Reply brief filed by General Counsel.
Served 2-8-43.

Feb. 15—Reply brief filed by taxpayer. 2-15-43
copy served on General Counsel.

Apr. 13—Memorandum findings of fact and opinion rendered, Mellott, Judge, Div. 11. Decision will be entered for the respondent. 4-14-43 copy served.

Apr. 14—Decision entered, Mellott, Judge, Div. 11.

June 29—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by taxpayer.

June 29—Proof of service filed of petition for review, praecipe, and statement of points.

June 29—Praecipe filed by taxpayer.

June 29—Statement of points filed by taxpayer.

[1*]

United States Board of Tax Appeals

Docket No. 108007

GEORGE A. KOCH as Executor of the Estate of
Adolph J. Koch,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the

*Page numbering appearing at top of page of original certified Transcript of Record.

Commissioner of Internal Revenue in his notice of deficiency (Bureau Symbols, IRA:90-D:CSW (C:TS:PDSF:MWB) dated May 22, 1941 and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual, with residence at 144 Funston Avenue, San Francisco, California, and is the executor of the estate of the late Adolph J. Koch on behalf of which this petition is filed. The return for the period here involved was filed with the collector for the First District of California.

2. The notice of deficiency (a copy of which is hereto annexed and marked Exhibit A) was mailed to the petitioner on May 22, 1941.

3. The taxes in controversy are estate taxes. Date of death is June 29, 1939. The deficiency asserted is \$22,544.18, the entire amount of which is in controversy.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) In determining the gross estate of the decedent Adolph J. Koch, the Commissioner erroneously included therein the value of certain properties transferred by the decedent and certain cash gifts made by him in his lifetime to his son, George Koch, his grandson, Ralph J. Swickard, and to certain relatives, V. Koch and Daisy Koch, all of which appear fully in items (a) to (f) of the statement attached to Exhibit A annexed hereto.

(1) That the Commissioner erroneously

determined that the foregoing transfers and gifts were made by the decedent in contemplation of death.

(2) That the Commissioner erroneously determined that the decedent with respect to the properties transferred by him in trust for his grandson Ralph Swickard as described under item (a) [2] of the statement attached to Exhibit A, reserved the power to alter, amend, revoke, or terminate said trust within the provisions of Section 811 (d) of the Internal Revenue Code.

(b) In determining the net estate of the decedent, Adolph J. Koch, the Commissioner erroneously disallowed as a deduction an additional sum of \$500 payable to Mrs. Angelyn Compton, housekeeper and nurse to decedent.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The decedent Adolph J. Koch did not sustain a partial stroke in June 1938, nor was his physical condition impaired thereafter as found by the Commissioner but in fact he was in excellent health for a man of his age at the time the gifts and transfers were made and almost until the date of his death in June 1939. At the time of those gifts, and until a few months before his death, he was unusually active, was looking forward to travel, and was strenuously participating in fraternal and business affairs.

(b) At no time during 1938 and 1939 when the gifts were made did he entertain any thought of death and the gifts were motivated entirely by other controlling considerations and purposes associated with life, rather than with death.

(c) The discussions with his tax advisor cited by the Commissioner were held about ten years before his death and were in no way the motivating cause, dominant purpose, or inducing motive of the gifts.

(d) That the additional sum of \$500 payable to Mrs. Angelyn Compton was an enforceable legal liability against the estate at the date of death.

Wherefore, the petitioner prays that this Board may hear the proceeding and determine that no deficiency is due from the petitioner.

(Signed) VICTOR E. CAPPA

(Counsel)

Bank of America Building
San Jose, California [3]

State of California

County of Santa Clara—ss.

George Koch, being duly sworn, says that he, as executor of the estate of Adolph J. Koch, is the petitioner above named; that he has read the foregoing petition and is familiar with the statements contained therein; and that the statements contained therein are true, except those stated to be

upon information and belief, and that those he believes to be true.

(Signed) GEORGE KOCH

Subscribed and sworn to before me this 20th day of June 1941.

(Signed) G. E. BRIERLY [4]

74 New Montgomery Street
San Francisco, California

San Francisco
IRA:90-D:CSW
(C:TS:PD
SF:MWB)

Estate of Adolph J. Koch, Deceased,
Mr. George A. Koch, Executor,
144 Funston Avenue,
San Francisco, California

MT:ET-9914-1st California
Estate of Adolph J. Koch
Date of Death: June 29, 1939

Sir:

You are advised that the determination of the estate-tax liability of the above-named estate, discloses a deficiency of \$22,544.18, as shown in the statement attached.

In accordance with the provisions of existing internal-revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may

file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, San Francisco, for the attention of Conference Section. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner,

By

Internal Revenue Agent in
Charge.

Enclosures:

Statement

Form or waiver. [5]

Estate Tax

San Francisco

IRA:90-D:CSW (C:TS:PD
(SF:MWB

MT-ET-9814-1st California

Estate of Adolph J. Koch

Date of death: June 19, 1939

STATEMENT

In making this determination of your Federal

estate tax liability, careful consideration has been given to your protests dated November 20, 1940, and February 20, 1941, and to statements made at the conferences held on December 18, 1940, and March 20, 1941.

If you do not acquiesce in all of the adjustments making up the deficiency indicated, but desire to stop the accumulation of interest on that part of the deficiency resulting from adjustments to which you agree, please fill out the enclosed form of waiver, inserting therein the amount of the deficiency you desire to have assessed at once. The execution of this form for the agreed portion of the deficiency will not deprive you of your right to petition the United States Board of Tax Appeals for redetermination of the deficiency.

The deficiency results from the following adjustments:

	Returned	Tentatively Determined	Determined
Gross Estate			
Stocks and Bonds:			
Added item 2, Masonic Hall			
Assn., 2 shares	\$ 0.00	\$ 30.00	\$ 30.00
Transfers during decedent's life:			

The value of the following described properties, transferred by the decedent in his lifetime, is included in the gross estate, it being determined that said transfers were made in contemplation of death, and come within the provisions of section 811(c) of the Internal Revenue Code, and it is further determined that the value of the properties transferred by decedent in trust, as

Gross Estate	Returned	Tentatively Determined	Determined
described under item (a) herein below, is includable in the gross estate under the provisions of section 811(d) of the Internal Revenue Code as decedent reserved the power to alter, amend, revoke, or terminate said trust: [6]			
Item (a) Properties transferred	0.00	\$79,001.53	\$79,001.53
into trust by decedent on Dec. 20, 1938 for the benefit of his grandson, Ralph J. Swickard. Said properties are described in your return of Schedule G of Transfers as items numbered below, and the values are finally determined as indicated herein below:			
		Determined	
Item 1		\$ 5,331.25	
Item 1 Accrued interest		\$42.78	
Item 2		10,887.50	
Item 2 Accrued interest		27.22	
Item 3		10,937.50	
Item 3 Accrued interest		25.28	
Item 4		10,000.00	
Item 5		5,000.00	
Item 6		15,650.00	
Item 6 Accrued dividends		225.00	
Items 7, 8 and 9		3,900.00	
Items 10 and 11		6,100.00	
Items 12, 13 and 14		10,875.00	
<hr/>			
Total value of trust of Property		79,001.53	
Item (b) Properties transferred	0.00	\$79,290.98	\$79,290.98
by decedent on December 20, 1938, to his son, George A. Koch, which properties are described in the return under Schedule G of Transfers as			

	Tentatively Determined	Determined
--	-----------------------------------	-------------------

items numbered below, the values of which are finally determined as follows:

	Determined
Item 15	\$ 5,431.25
Item 15 Accrued interest	42.78
Item 16	11,075.00
Item 16 Accrued interest	29.17
Item 17	10,937.50
Item 17 Accrued interest	25.28
Item 18	10,000.00
Item 19	5,000.00
Item 20	15,650.00
Item 20 Accrued interest	225.00
Items 21, 22 and 23	3,900.00
Items 24 and 25	6,100.00
Items 26, 27, and 28	10,875.00
 Total	 \$79,290.98

[7]

Item (e) Transfers made by decedent to his son, George A. Koch, during the year 1939 described in the return under Schedule G of Transfers as items numbered below the values of which are finally determined as follows:

Item 29	
Cash transferred on	
January 3, 1939	\$ 4,000.00
Item 30	
Cash transferred on	
January 4, 1939	10,000.00
Item 31	
10 sh. of San Jose	
First National Bank	
transferred on Jan.	
15, 1939	2,650.00
Item 32	
Real estate transferred	
in May 1939	6,000.00

		Tentatively Returned	Determined	Determined
Added Item 32½—				
(Not described in the return) \$500 build- ing and loan com- pany certificate transferred on Jan.				
4, 1939	500.00			
<hr/>	<hr/>			
Total	\$23,150.00			

Item (c) 32, above, and Item (d) 36 below, represent the value of two tracts of real property described in the return at sub-items 2 and 3 of Schedule G of Transfers. Sub-item 1 of said Schedule, describing real estate located on Third Street, 148.38 feet north of San Carlos Street, in San Jose, California, and valued at \$6,000.00 is held not to have been transferred in contemplation of death by decedent, and, therefore, not includable in the gross estate. The value thereof, which heretofore was tentatively included in the gross estate, has been eliminated from said items herein. [8]

		Tentatively Returned	Determined	Determined
Item (d) Transfers made by de- cedent to his grandson, Ralph J. Swickard, and described in the return under Schedule C of Transfers as items numbered below, the value of which are finally determined as follows:		0.00	\$24,000.00	\$21,000.00
Item 33				
Cash transferred on January 3, 1939	\$ 4,000.00			
Item 34				
Cash transferred on January 4, 1939	10,000.00			

		Returned	Tentatively Determined	Determined
Item 35				
1930 Dodge Coupe				
transferred on Jan.				
uary 15, 1939	500.00			
Item 36				
Real estate transferred				
In May 1939	6,000.00			
Added Item 36½				
(Not described in the				
return) \$500 build-				
ing and loan com-				
pany certificate				
transferred on Jan.				
3, 1939	500.00			
<hr/>				
Total	\$21,000.00			
Item (e) Transfer of cash made by				
decedent on December 24, 1938				
to Mrs. V. Koch	0.00	1,000.00	1,000.00	
Item (f) Transfer of cash made				
by decedent on January 18,				
1939, to Daisy Koch	0.00	1,000.00	1,000.00	

During the period from December 20, 1938 to the date of death, June 29, 1939, the decedent made substantial gifts (as above set forth) of property to certain specific beneficiaries under his will, and to his son and grandson, both designated residuary legatees in the will, in the aggregate sum of \$204,442.51, the value of which was not included in the gross estate in the Federal estate tax return. Because the decedent, while in advanced age, suffered a partial stroke in June, 1938; his physical condition thereafter being impaired; his discussion with his tax advisor of advantages in disposing of properties by gifts over disposition by bequest; and that gifts were made to persons nominated as objects of his bounty under the provisions of his will, it is

held that transfers of properties during the seven months preceding the date of death, were made in contemplation of death, and the gross estate is accordingly increased by the sum of \$204,442.51. [9]

	Returned	Tentatively Determined	Determined
Deductions			
Debts of decedent:			
Item 2 Amount paid to Mrs.			
Compton, nurse-housekeeper	\$500.00	0.00	0.00

In the Federal estate tax return there were claimed as debts of the decedent, accrued compensation of \$75.00 for June, 1939, due Mrs. Angelyn Compton, housekeeper and nurse to decedent, and an additional sum of \$500.00 was claimed as payable to Mrs. Angelyn Compton. Inasmuch as the sum of \$500.00 claimed as a deduction in favor of Mrs. Angelyn Compton, nurse, was not an enforceable legal liability at the date of death, deductions for debts of the decedent are accordingly decreased by the sum of \$500.00.

Added Item 16 U. S. Gift Tax liability of decedent for calen-	dar year 1939	00.00	0.00	5,374.12
--	---------------	-------	------	----------

In the Federal estate tax return there was claimed as a deduction for deficiency in Federal gift taxes for 1938 in the amount of \$27.00, but no deduction was claimed for gift taxes on transfers during 1939. Subsequent to the date of death the executor of the estate filed a gift tax return for the year 1939 disclosing a gift tax liability of \$5,100.00, and subsequently a deficiency in 1939 gift taxes was determined and assessed in the amount of \$274.12,

a total of \$5,374.12. The entire liability for gift tax on 1939 gifts constitutes a definite obligation at the date of death, and debts of the decedent are accordingly increased by the sum of \$5,374.12.

In view of the foregoing, the Federal estate tax liability of this estate is finally determined as follows:

	Determined
Gross estate	\$347,077.90
Reductions for basic tax	110,918.57
<hr/>	
Net estate for basic tax	\$236,159.33
Net estate for additional tax	\$296,159.33
Gross basic tax	\$ 5,946.37
Credit for gift tax	3,064.55
<hr/>	
Gross basic tax less gift tax credit.....	\$ 2,881.82
Credit for State estate, inheritance, legacy or succession taxes	2,305.46
<hr/>	
Net basic tax	\$ 576.36
	[10]
	Determined
Total Gross taxes (basic and additional)	\$ 45,831.87
Gross basic tax	5,946.37
<hr/>	
Gross additional tax	\$ 39,885.50
Credit for gift tax	9,091.63
<hr/>	
Net additional tax	\$ 30,793.87
Net basic tax	576.36
<hr/>	
Total net estate tax	31,370.23
Amount assessed as shown on return	8,826.05
<hr/>	
Deficiency	\$ 22,544.18

The deficiency bears interest at the rate of 6 per cent per annum from 15 months after the de-

cedent's death to the date of assessment, or to the thirtieth day after the filing of a waiver of the restrictions on the assessment, whichever is the earlier.

Upon receipt of a waiver or upon the expiration of 90 days from the date of this letter if a petition is not filed with the Board of Tax Appeals, the deficiency will be assessed.

Credit for gift taxes paid has been allowed hereinabove in accordance with the following computation:

Computation of Gift Tax Credit

Gift taxes on gifts made by decedent in calendar year 1938 amounted to the sum of \$7,547.06. The value of all of the gifts made in 1938 has been finally determined to be includable in decedent's gross estate as explained hereinabove, therefore, the entire amount of said gift taxes is allowable as a credit against the estate taxes, proportioned between the basic and additional estate taxes. \$7,547.06

Of the gifts made by decedent in the calendar 1939 of a total value of \$50,150.00 for both gift and estate tax purposes, the value of the whole thereof, excepting one item of real property, valued at \$6,000.00, is finally determined to be includable in decedent's gross estate for estate tax purposes, as hereinabove explained. The total gift taxes for the calendar year 1939 amounted to \$5,374.12, and the portion thereof allowable as a credit against the estate taxes amounts to the sum of \$4,609.12, computed as follows:

4,609.12

Total value of gifts for calendar year 1939.....\$ 50,150.00
 Less:

Exclusions (applicable to first gifts made by decedent in said calendar year) 8,000.00

Net gifts taxed in calendar year 1939.....\$ 42,150.00

Less:
 Gift of real estate not included in decedent's gross estate 6,000.00

Net value of gifts for calendar year 1939 included in decedent's gross estate\$ 36,150.00

The portion of the gift tax for the calendar year 1939 that is allowable as a credit against the estate taxes is computed thus:

\$36,150.00 (gift tax value of gifts included in the gross estate—less exclusions)

\$42,150.00 (total gift tax value of all gifts made in 1939—less exclusions)

multiplied by \$5,374.12 (total gift tax for 1939)
 equals \$4,609.12, the allowable gift tax credit.

Total gift taxes for 1938 and 1939 allowable as credit against the estate taxes\$ 12,156.18

The total gift tax value (less exclusions) amounts to the sum of \$178,872.03, arrived at thus:

Gross gift tax value of 1938 gifts included
 in estate\$152,722.03

Gross gift tax value of 1939 gifts included
 in estate 44,150.00
 (Gift of real estate valued at \$6,000 not included)

Total\$196,872.03

Less:

Exclusions—1938\$10,000.00
 1939 8,000.00 18,000.00

Total gift tax value (less exclusions) of gifts included in decedent's gross estate\$ 178,872.03

The total estate tax value of the same properties, computed in like manner, amounts to the sum of \$184,442.51. The total allowable gift tax credit of \$12,156.18 is to be apportioned between the basic and the additional estate taxes on the basis of the gift tax values, computed thus:

\$178,872.03 (gift tax value—less exclusions, of gifts included in estate)
\$347,077.90 (estate tax value of decedent's gross estate)

Multiplied by \$5,946.37 (the gross basic estate tax) equals \$3,064.55 (the amount of gift tax credit allowable against the basic estate tax).

The amount of said total allowable gift tax credit that is applicable against the additional estate tax, therefore, is the sum of \$9,091.63, arrived at thus:

\$12,156.18 minus \$3,064.55 equals \$9,091.63, said remainder not being in excess of the sum otherwise limited by statute.

(See sections 813(a) (2) and 936(b) of the Internal Revenue Code, as amended, and Article 9(a) of Treasury Regulations 80 (1937 edition) as amended).

[Endorsed]: U.S.B.T.A. Filed June 28, 1941.

[13]

[Title of Board and Cause.]

AMENDED PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the

Commissioner of Internal Revenue in his notice of deficiency (Bureau Symbols, IRA:90-D:CSW (C:TS:PDSF:MWB) dated May 22, 1941 and as a basis of his proceeding alleges as follows:

1. The petitioner is an individual, with residence at 144 Funston Avenue, San Francisco, California, and is the executor of the estate of the late Adolph J. Koch on behalf of which this petition is filed. The return for the period here involved was filed with the collector for the First District of California.

2. The notice of deficiency (a copy of which is hereto annexed and marked Exhibit A) was mailed to the petitioner on May 22, 1941.

3. The taxes in controversy are estate taxes. Date of death is June 29, 1939. The deficiency asserted is \$22,544.18, the entire amount of which is in controversy.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) In determining the gross estate of the decedent Adolph J. Koch, the Commissioner erroneously included therein the value of certain properties transferred by the decedent and certain cash gifts made by him in his lifetime to his son, George Koch, his grandson, Ralph J. Swickard, and to certain relatives, Mrs. V. Koch and Daisy Koch, all of which appear fully in items (a) to (f) of the statement attached to Exhibit A annexed hereto.

(1) That the Commissioner erroneously

determined that the foregoing transfers and gifts were made by the decedent in contemplation of death.

(2) That the Commissioner erroneously determined that the decedent with respect to the properties transferred by him in trust for his grandson Ralph Swickard as described under item (a) [14] of the statement attached to Exhibit A, reserved the power to alter, amend, revoke, or terminate said trust within the provisions of Section 811 (d) of the Internal Revenue Code.

(b) In determining the net estate of the decedent, Adolph J. Koch, the Commissioner erroneously disallowed as a deduction an additional sum of \$500 payable to Mrs. Angelyn Compton, housekeeper and nurse to decedent.

(c) In failing to allow as an additional deduction from gross estate the amount of attorney's fees incurred on this appeal consisting of one third of the saving effected on this proceeding.

5. The facts upon which the petitioner relies as the basis of this proceeding are as follows:

(a) The decedent Adolph J. Koch did not sustain a partial stroke in June 1938, nor was his physical condition impaired thereafter as found by the Commissioner but in fact he was in excellent health for a man of his age at the time the gifts and transfers were made and al-

most until the date of his death in June 1939. At the time of those gifts, and until a few months before his death, he was unusually active, was looking forward to travel, and was strenuously participating in fraternal and business affairs.

(b) At no time during 1938 and 1939 when the gifts were made did he entertain any thought of death and the gifts were motivated entirely by other controlling considerations and purposes associated with life, rather than with death, such as the desire to provide for the education of his grandson Ralph and to equalize the gift and to help his son George out in business.

(c) The discussions with his tax advisor cited by the Commissioner were held about ten years before his death and were in no way the motivating cause, dominant purpose, or inducing motive of the gifts.

(d) That the additional sum of \$500 payable to Mrs. Angelyn Compton was an enforceable legal liability against the estate at the date of death.

(e) That the petitioner has incurred a liability for attorney's fees of one third of the saving effected in this proceeding.

Wherefore, the petitioner prays that this Board may hear the proceeding and determine that no deficiency is due from the petitioner.

(Signed) VICTOR E. CAPPA

(Counsel)

Bank of America Building
San Jose, California [15]

State of California

County of Santa Clara—ss.

George Koch, being duly sworn, says that he, as executor of the estate of Adolph J. Koch, is the petitioner above named; that he has read the foregoing petition and is familiar with the statements contained therein; and that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

(Signed) GEORGE KOCH

Subscribed and sworn to before me this 12th day of Aug., 1941.

(Signed) LESTER W. WELING [Seal]
Notary Public in and for the County of Santa Clara, State of California.

[Endorsed]: U.S.B.T.A. Filed August 16, 1941.

[16]

[Title of Board and Cause.]

ANSWER TO PETITION AND AMENDED PETITION

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition and amended petition filed by the above-named petitioner, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition and amended petition.
2. Admits the allegations contained in paragraph 2 of the petition and amended petition.
3. Admits the allegations contained in paragraph 3 of the petition and amended petition.
- 4(a)(1) and (a)(2), (b), and (c). Denies that the Commissioner erred in the determination of the deficiency as alleged in subparagraphs (a)(1) and (a)(2), (b), and (c) of paragraph 4 of the petition and amended petition. [17]
- 5(a) to (e), Inclusive. Denies the allegations contained in subparagraphs (a) to (e), inclusive, of paragraph 5 of the petition and amended petition.
6. Denies generally and specifically each and every allegation in the petition and amended petition not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the Commissioner's

determination be approved and the petitioner's appeal denied.

(Signed) J. P. WENCHEL,
F.T.H.
Chief Counsel,
Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD.

Division Counsel:

FRANK T. HORNER,

Special Attorney,

Bureau of Internal Revenue.

[Endorsed]: U.S.B.T.A. Filed Sept. 3, 1941 [18]

The Tax Court of the United States

Docket No. 108007

ESTATE OF ADOLPH J. KOCH, GEORGE
Koch, Executor,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Gerald S. Chargin, Esq.,
for the petitioner.

Arthur L. Murray, Esq.,
for the respondent.

MEMORANDUM FINDINGS OF FACT AND
OPINION

Mellott, Judge: This proceeding involves a deficiency in estate tax in the amount of \$22,544.18. Respondent determined that decedent had made transfers, in contemplation of death and within two years prior to his death, of property having an aggregate value of \$204,442.51. He included this amount in gross estate under section 811 (c) of the Internal Revenue Code. Inasmuch as \$79,001.53 of the amount referred to had been transferred by decedent to a trust for the benefit of his grandson, this amount was also determined to be includible in gross estate under section 811 (d) of the Internal Revenue Code. Petitioner contends that neither determination is correct. [19]

Two other issues were raised by the pleadings.

determination be approved and the petitioner's appeal denied.

(Signed) J. P. WENCHEL,
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 Chief Counsel,
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Two other issues were raised by the pleadings.

One relates to the refusal of the respondent to allow the deduction of \$500, alleged to be an additional sum payable to decedent's housekeeper and nurse. The other, not referred to in the notice of deficiency but set out in the petition, relates to an anticipated expenditure for attorney's fees in this proceeding. These issues appear to have been abandoned since neither is discussed by petitioner upon brief; but if they have not been abandoned they must be decided against petitioner for failure to present any evidence in support of them.

FINDINGS OF FACT

Adolph J. Koch, hereinafter referred to as the decedent, died testate on June 29, 1939, at the age of 84 years. He was then a resident of San Jose, California. His son, George A. Koch, is the duly qualified executor of his estate. An estate tax return was filed with the collector of internal revenue for the first district of California on October 19, 1939. It states that the "business or occupation" of decedent at the time of his death was "retired".

Decedent's wife, Elizabeth Koch, predeceased him. He was survived by a son, George A. Koch, and two grandsons, Kenneth Koch, the son of George, and Ralph J. Swickard, the son of his daughter, Hilda. Ralph's mother died at the time of, or shortly after, his birth.

The decedent and his wife, after the death of their daughter, supported in their household their grandson, Ralph, until he reached the age of seventeen or eighteen years, when he went to live with his

father, his stepmother and her son by a prior marriage. Decedent was very anxious that Ralph should have the best educational advantages and that he should go to Stanford University where his other grandson, Kenneth, was a student. Ralph entered Stanford University [19-A] in the fall of 1938, and on September 21, 1938, the decedent gave him a check for \$500 for his tuition. This amount is not in issue in this proceeding.

The decedent was a man of considerable means. Between 1913 and 1938 he made several gifts to his son George. In 1913 he gave him some flats, valued at \$30,000, for a wedding present. Between 1913 and 1930 he gave him at least \$10,000. In 1930 he gave him \$40,000 to enable him to go into the stock and bond business. None of these amounts is in issue in this proceeding. During the latter part of 1931 or the early part of 1932 decedent told his attorney that he was planning to make a gift to his son George of approximately \$100,000 in securities, because the latter had sustained substantial losses in the failure of the stock and bond firm of which he had been a partner. The attorney advised that because of the failure of the firm George had a contingent liability and would probably lose any property which might be transferred outright to him at that time. He therefore recommended that decedent make a will in which any property intended for George would be tied up so that his creditors could not reach it. Following this advice, the decedent, on February 23, 1932, executed a will

which provided that, in the event of his death, the inheritance intended for George would remain in a spendthrift trust.

After George was discharged in bankruptcy of debts amounting to about \$1,000,000, the decedent, on July 25, 1935, executed another document which, with codicils, became his last will and testament. He provided therein for three specific bequests, \$5,000 to his brother and \$1,000 each to his sister-in-law and niece. The remainder of his property was devised and bequeathed to his son George and his grandson, Ralph. Ralph's half was to be held in trust by George, the latter being directed to pay out of the income such amounts as [20] he should deem necessary for the support, maintenance and education of Ralph until he should reach the age of twenty one years, at which time one fourth of the trust estate was to be delivered to him. The trustee was given the power in his discretion to deliver the remainder of the trust property to the beneficiary at any time after he had reached the age of twenty five years, and, if he did not exercise this discretion, the trust was to cease and terminate when Ralph reached the age of thirty years, at which time he was to receive all of the trust property remaining in the hands of the trustee.

This will was amended by a codicil dated March 3, 1937, which made certain changes in the time when part or all of the trust estate was to be delivered to Ralph by the trustee.

On December 20, 1938, decedent made an absolute gift to his son of properties which, on the date of

the decedent's death had a value of \$79,290.98. On the same date decedent made a gift in trust for the benefit of his grandson Ralph of properties which, on the date of decedent's death, had a value of \$79,001.53. Decedent's son George was named as trustee in the trust instrument. Under its provisions he was directed to pay out of the income of the trust such amounts as he deemed necessary for the support, education and maintenance of Ralph until he became twenty one years of age, and thereafter he was to pay Ralph the income of the trust until he reached the age of twenty five, at which time all of the trust property was to be turned over to him and the trust was to terminate. No power to change, alter or amend the trust was reserved in the settler.

Decedent, during the month of January, 1939, made absolute gifts to George and Ralph of cash and other properties, the value of which on the date of his death was \$23,150 and \$21,000 respectively. [21]

The decedent paid Federal gift taxes on the gifts referred to above in the amounts of \$7,547.06 for 1938 and \$5,374.12 for 1939.

Additional codicils were added by the decedent to his will on December 24, 1938, January 18, 1939, and February 9, 1939. They referred to the specific bequests in his will of \$1,000 each to his sister-in-law and niece, and \$5,000 to his brother, stated that these amounts had been given to them on the respective dates, and that they were advancements made "in

lieu of" and "in payment of" the bequests during his lifetime.

After making these transfers, which amounted to \$209,442.51, the decedent retained, until the time of his death, cash and other properties having a total value of \$142,605.39.

About five or six years prior to his death, the decedent, while crossing a street in San Jose, California, was struck by an automobile. The injury sustained by him probably broke a muscle and caused an inside hemorrhage over his right hip. During the six or eight weeks following the accident, the attending physician withdrew from the injured side several quarts of fluid. The injury left the decedent with a large depression in his right side, and thereafter the side bothered him. At times he would say: "This automobile injury has come back on me." He complained of having a "rheumatism pain", and had an electric ring which he sat on and put around him. He said the ring soothed and helped him. Prior to the automobile accident the decedent had always enjoyed good health, had never been bedridden or hospitalized, and had seldom required the attention of a physician. [22]

On May 18, 1938, the decedent had a paralytic stroke, and, for a time, was unable to use his left hand and left lower extremity. He had fallen, while alone, but had managed to get to his bed where he was found by his housekeeper and nurse, who called the doctor. The nurse told the doctor that the decedent's son wanted him to visit the decedent every day so she could tell him (he residing in

another city) how his father was getting along. During the period from May 21 to June 23, 1938, the doctor visited the decedent twenty eight times. At the time of his last call, on June 22, 1938, decedent's left leg had improved and he was able to stand by the bed with the use of crutches for support. He was not able to walk unassisted at that time. For a while he had to have someone help him into his automobile when he went riding. His condition improved, however, and his limp "cleared up almost entirely."

Decedent was a member of the Knights Templar organization, and it furnished him with a wheel chair, which was kept in his garage. The wheel chair was used some; but decedent did not like to ride in it and his nurse did not like to push it. He was very independent, often refused proffered assistance, and at times walked without his cane.

After his illness in 1938 the decedent spent much of his time sitting on the porch of his home or in the front room, looking out of the window. He usually retired early and got up early. He was always in good spirits and never talked about death. He was a director of a building and loan association, and during the year 1938, missed only two of the monthly meetings of the directors. He participated actively in the discussions at these meetings. In the early part of 1939, he visited the offices of the association "a couple of times" and on at least one occasion told the counsel for the association that [23] he had walked down. The office was five blocks from decedent's residence.

During 1939, decedent shaved himself with an electric razor, and had his hair cut at a barber shop approximately once every three weeks. He frequently walked to the barber shop, which was a block from his home.

On the night before Christmas of 1938, decedent walked down to the Masonic Temple with his house-keeper and nurse. He personally attended to all the details of the Christmas breakfast of the Knights Templar organization, of which he was in charge, and took great pains to see that all of the tables were fixed right, that the ladies waited on the tables, and that the hams were cut right. He also made a little talk to the members. He attended the Christmas breakfast in a wheel chair. His nurse "took him down" to the Masonic Temple where the breakfast was served.

From June 22, 1938, until the date of his death the decedent was not treated by any doctor, except that on December 26, 1938, he received treatment for an inflamed eye.

The decedent died on June 29, 1939. The cause of death was an extra peritoneal hemorrhage due to rupture of the left hypogastric artery, which could have been caused by a fall in the bathroom the morning of his death. Contributory causes were chronic interstitial nephritis with cystic degeneration of the right kidney and senility. The contributory causes, other than senility, were revealed by an autopsy. The decedent had never complained of, or been treated for, the conditions disclosed by the autopsy.

The respondent determined that all of the gifts and transfers made by the decedent during the period December 20, 1938, to the date of his death, except the \$5,000 given to his brother, were made in contemplation of death. He therefore increased the gross estate by the aggregate amount thereof (\$204,442.51)

The transfers by the decedent, aggregating \$204,442.51, were made in contemplation of death.

[24]

OPINION

The principal issue is whether respondent erred in determining that the transfers were made in contemplation of death and hence that the value of the property transferred is to be included in gross estate under section 811 (d) of the Internal Revenue Code.¹ The question is essentially one

¹Sec. 811. Gross Estate.

The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated, except real property situated outside of the United States.

* * * *

(c) Transfers in Contemplation of, or Taking Effect at Death.—To the extent of any interest therein of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of or intended to take effect in possession or enjoyment at or after his death, or of which he has at any time made a transfer, by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does

of fact, to be determined from a consideration of all the pertinent facts and circumstances, *First National Bank of Boston v. Commissioner*, 63 Fed. (2d) 685; *Flack v. Holtegel*, 93 Fed. (2d) 512; but the respondent has the advantage of two rebuttable presumptions—one, that his determination is correct, *Hickwire v. Reinecke*, 275 U. S. 101; *Welch v. Helvering*, 290 U. S. 111, and the other given by the statute, since the transfers were of a material part of decedent's property and were made by him without consideration within two years prior to his death. [25]

Finding has been made that the transfers were in contemplation of death. Conclusion must therefore be reached that the respondent committed no error in including the value of the property in decedent's gross estate. The evidence, in our judgment, clearly supports the finding, independent of the presumptions to which reference has been made. A brief resume of the evidence and the principles established by decided cases will not be amiss.

not in fact end before his death (1) the possession or enjoyment of, or the right to the income from, the property, or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth. Any transfer of a material part of his property in the nature of a final disposition or distribution thereof, made by the decedent within two years prior to his death without such consideration, shall, unless shown to the contrary, be deemed to have been made in contemplation of death within the meaning of this subchapter;

“Contemplation of death”, as used in the statute, requires that the triers of fact apply a subjective test and attempt to ascertain from the available facts “the state of mind” of a donor whose lips have been sealed by death. *United States v. Wells*, 283 U. S. 102. Decided cases, at best, are of comparatively slight aid; for the facts are as varied as the personalities of the donors. Collectively they suggest that all proper evidence, even circumstantial, should be considered, *Farmers' Loan & Trust Co. v. Bowers*, 68 Fed. (2d) 916, certiorari denied 293 U. S. 565; and “hardly any fact is too minute for consideration.” *Paul, Federal Estate and Gift Taxation*, p. 244 and note. “The differentiating factor must be found in the transferor's motive. * * * the motive which induces the transfer must be of the sort which leads to testamentary disposition.” “There can be no precise delimitation of the transfers embraced within 'the conception of transfers in 'contemplation of death' as there can be none in relation to fraud, undue influence * * * or other familiar legal concepts * * *.” *United States v. Wells*, *supra*. [26]

What was decedent's motive in making transfers of approximately 60 percent of his properties when he was nearly 84 years of age? Petitioner urges that the purpose of the transfer to the grandson, Ralph, was to make certain that he would get a college education at Stanford University and to set him up in business later. The purpose of the transfer to the son, George, is said to have been to carry out a policy, long pursued by decedent, of

making liberal gifts to him during his lifetime and to equalize the gifts to him with the gifts to the grandson. No attempt is made to explain his motive in advancing the time of payment of the \$1,000 bequests to his sister-in-law and niece. Respondent insists that the transfers were made at a time when advanced age and incapacitation must have suggested to decedent that the end was drawing near, that they were strictly in accordance with the intention indicated by him in his last will, and that they were testamentary in character.

There is no dispute concerning the value of the transferred properties. Twelve witnesses, including three physicians, several neighbors of decedent, his son, his attorney, and his housekeeper and nurse, testified at length with reference to his physical condition, his activities, and statements made by him both before and after the transfers were made. There is some conflict in the testimony of these witnesses with reference to whether the decedent was hit on the right or the left side at the time of the automobile accident, and the nature of his illness in 1938. The evidence indicates that the decedent's injuries as a result of the automobile accident were to his right side and we have so found. It is also clear that the decedent suffered a paralytic stroke in May, 1938, which affected the left side of his body; and, while he had partially recovered from it, the after effects, together with the disability resulting from the automobile accident and general senility, had caused him to become pretty much of an invalid. [27]

The burden was on the petitioner to show that decedent's gifts in December, 1938, and January, 1939, were motivated by impulses primarily associated with life. *United States v. Wells*, *supra*. There is very little evidence in the record upon which to rest a finding that any of his gifts were in this category. The implication from most of the evidence is to the contrary. In his will executed in 1935, decedent, after making specific bequests of \$1,000 each to his sister-in-law and niece and \$5,000 to his brother, provided that one half of the residue of his estate should go to his son and that the other one half should go to a trust created for the benefit of his grandson, Ralph. The gifts made by him in December, 1938, and January, 1939, made the same disposition of approximately sixty percent of his properties. His sister-in-law, niece and brother each received the same amount that would have been received under the will; and absolute gifts of securities having a value of \$102,440.28 were made to George, while securities having a value of \$100,001.53 were transferred to, or for the benefit of, Ralph.

The time and manner in which the transfers were made indicate that they were substitutes for testamentary dispositions of decedent's property. In the case of the gifts to his sister-in-law, niece and brother, he was careful to point out that they were "in lieu of" the provisions made for them in his will. It was unnecessary to make similar statements concerning the gifts to his son and grandson since the will provided that each was to receive one half of

the residue of his estate and any transfers made to them during decedent's lifetime merely diminished the residuary estate. It is a significant fact, however, that the decedent followed the intention expressed in his will of dividing his property, *per stirpes*. [28]

Examining in more detail the contentions made by petitioner and the evidence relied upon in support of them, it will be noted that Ralph entered Stanford University in the fall of 1938, at which time decedent gave him a check for \$500 to pay his tuition. Ralph's age at that time is not shown; but it is obvious he was less than twenty-one. Decedent must have known, in the latter part of 1938, that Ralph had no immediate need for any large sum of money and that several years would elapse before he could embark on a business career. So long as decedent lived he was in a position to furnish Ralph with funds required, either for his education or for business. He had made adequate provision in his will to take care of Ralph's needs after his death. We do not doubt that decedent wanted Ralph to become "a good business man and not a fiddler," as some of the witnesses stated, and that his intention was to make Ralph "absolutely independent". That, however, does not satisfactorily explain why he should have advanced the time of enjoyment by Ralph of such a substantial portion of his property. The record is devoid of any intimation that he was endeavoring to school his grandson in the handling of money and the inference is to the contrary; for the major portion of the

property given to him was to be administered by his uncle, as trustee, and the trustee was to pay out of the income only such amounts as he should deem necessary for the boy's "support, education and maintenance." Inasmuch as the trust then created for Ralph was in essence the same as the trust which was to be set up after decedent's death, it is difficult to see why it was created, if it were not for the reason determined by the respondent.

[29]

The gifts to the son seem to be in the same category. Petitioner urges that one reason for the gifts to him was decedent's desire to give him an amount equal to that given to Ralph. An intention to divide his estate equally between George and Ralph is clearly evidenced by the terms of decedent's will; and the fact that he provided each should receive approximately the same amount of his property when he made the gifts in December, 1938, and January, 1939, shows that there was no change in this plan. This, however, does not explain the decedent's motive in advancing the time of the enjoyment of George's share of his property. The contention that the gifts to the son were but a continuation of a policy of more than thirty years of making liberal gifts to him is also not proved. It is true that decedent had given George \$30,000 as a wedding present in 1913, \$10,000 some time between 1913 and 1930, and \$40,000 when he went into business in 1930; but there is no evidence that the decedent had made any gifts to George after

1930 until the gifts now in issue were made. In our judgment the gifts to George in 1938 and 1939 cannot be attributed to any long continued policy or practice. They, like the gifts to Ralph, appear rather to have been made as substitutes for and in lieu of testamentary disposition of his property.

Petitioner attempted to picture decedent as being in good physical condition during the latter part of 1938 and the early part of 1939 when the gifts were made. Some of the evidence relied upon is that with reference to the Christmas party of the Knights Templar, the fact that he attended some of the meetings of the board of directors of the building and loan association, made some trips to the barber shop, was able to get about his home, and took a few automobile rides. An examination of all of the evidence in connection with [30] these events militates against petitioner. Thus, the record shows that the breakfast was attended in a wheel chair and that the decedent was then suffering from the effect of the partial stroke as well as from the earlier automobile accident. On some of the occasions when he attended the director's meetings he was brought there in an automobile furnished by the association. When he determined to make the gifts in December of 1938 he had George secure the stocks and bonds from his safety deposit box and bring them to him at the house. He then had George call his attorney on the phone and in response thereto the attorney called at decedent's home to discuss with him the details of

the trust which he intended to create for Ralph. On at least some of the trips to the barber shop the decedent was assisted by his housekeeper and nurse. It is no doubt true that decedent was of a jovial disposition and did not discuss death at any length with those with whom he associated; but he must have known that the sands of life were fast running out, that his life expectancy was short and that it was highly desirable his house be put in order. He was almost 84 years of age when the gifts were made—his exact age at the time of death was 84 years, 3 months and 5 days—and was spending most of his time in a chair on the porch or at the front window of his home. The normal activities of a busy life had all but ceased. He was tax conscious, as is indicated by the fact that he deliberately divided the gifts between 1938 and 1939 in order to minimize his tax liability. It would be closing our eyes to the obvious to hold that thoughts of death did not enter into his mind and motivate the transfers. While age alone is not a decisive test, *Flack v. Holtegel*, *supra*, it may well tip the scales where other facts strongly point to testamentary disposition. [31]

The present record, in our judgment, supports respondent's determination that the gifts made by decedent in December, 1938, and January, 1939, were in contemplation of death as that term is defined in *United States v. Wells*, *supra*. We therefore respectfully decline to disturb it. In view of the conclusion which has been reached, it is unnecessary to discuss or decide the second question, i. e.,

whether the value of the property transferred in trust on December 20, 1938, should be included in the gross estate of decedent under the provisions of section 811 (d) of the Internal Revenue Code.

Judgment will be entered for the respondent.
Enter:

Entered Apr 13 1943 [32]

United States Board of Tax Appeals
Washington

Docket No. 108007

ESTATE OF ADOLPH J. KOCH, GEORGE
Koch, Executor,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Memorandum Findings of Fact and Opinion, entered April 13, 1943, it is

Ordered and Decided: That there is a deficiency in estate tax of \$22,544.18.

[Seal] (S) ARTHUR J. MELLOTT
Judge.

Enter:

Entered April 14, 1943. [33]

The Tax Court of the United States
[Title of Cause.]

REPORTER'S MINUTES

Hearing at Santa Clara County Courthouse, Superior Court Room No. 4, San Jose, California, on the 21st day of November, 1942, at 9:45 o'clock A. M.

The above-entitled proceeding came on for hearing on this 21st day of November, 1942, before the Honorable Arthur J. Mellott, Judge, The Tax Court of the United States, at San Jose, California, pursuant to notice of hearing heretofore given, whereupon the following proceedings were had, to-wit:

Appearances:

GERALD S. CHARGIN, Esq.,

(507 First National Bank Building, San Jose, California) appearing as counsel for petitioner.

ARTHUR L. MURRAY, Esq.,

(508 Sharon Building, San Francisco, California) Special Attorney for the Commissioner of Internal Revenue. [35]

Whereupon

GEORGE ADOLPH KOCH

was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

The Clerk: What is your full name, please? [40]

The Witness: George Adolph Koch, K-o-c-h.

Direct Examination

By Mr. Chargin:

Q. Mr. Koch, where do you reside at this time?

A. I am at the Durant Hotel in Berkeley.

Q. And what is your principal occupation?

A. I am manager of the Durant Hotel.

Q. And you are the son of Adolph Koch?

A. That's right.

Q. When did your father die?

A. I didn't get that.

Q. When did your father pass away?

A. Why, I haven't the exact date; in '39.

Q. Sometime in June, 1939?

A. That's right.

Q. And where was he living at the time of his death?

A. At 285 South Third Street, San Jose.

Q. 285 South Third, San Jose. Who was living with him at that time, if anybody?

A. Well, Mrs. Compton was housekeeper for him.

Q. Mrs. Compton was a housekeeper at the place? A. That's right.

Q. That property was his own property?

A. Yes.

(Testimony of George Adolph Koch.)

Q. And your mother had predeceased your father some [41] time? A. That's right.

Q. When did she pass away?

A. Oh, five or six years before. I just don't remember.

Q. I see. And so your father was living alone at that home, other than the housekeeper?

A. That's right.

Q. (Continuing) At that time. And now, did your father give you any gift of money or property during the year 1917? A. Yes.

Q. How much in 1917, roughly speaking?

A. Well, he gave me \$40,000.00.

Q. Forty thousand? A. That's right.

Q. What year was the forty thousand dollars?

A. You asked me about 1917. If you will let me explain.

Q. All right, explain. You say then that he gave you \$40,000.00 in 1917, is that correct?

A. Well, I just don't remember the date. I was in the stocks and bond business, if that is what you refer to, when he made me a gift of the money.

Q. No. I don't mean to confuse you, but I believe [42] that question of a gift to go in business was subsequent to that time, considerably.

Mr. Murray: If Your Honor please, I will object to some of these questions as being too leading.

The Judge: Overruled.

By Mr. Chargin:

Q. Well, I will put it this way: When you

(Testimony of George Adolph Koch.)

went into the stocks and bond business, how much did your father give you?

A. Forty thousand dollars.

Q. And have you any idea what year that was?

A. That was in around 1930 or '31.

Q. Nineteen twenty what? A. 1930, '31.

Q. All right, 1930 or '31. And that was \$40,000.00. And what business did you go into?

A. A brokerage business.

Q. With whom? A. Gorman & Kaiser.

Q. Gorman & Kaiser. And you were what, a partner in that business?

A. I was a partner.

Q. Now, I will ask you this: When, about, did you get married?

A. Married the first time in 1913. [43]

Q. 1913. Do you know whether or not you received anything from your father at or about that time?

A. A little later on he made me the present of a set of flats?

Q. A set of flats. And where were these flats located? A. 144 Funston Avenue.

Q. And that is in San Francisco?

A. That's right.

Q. What was the value of those properties?

A. Thirty thousand dollars.

Q. Thirty thousand dollars. After 1913 did your father give you any further gifts?

A. Not that I recall at present.

(Testimony of George Adolph Koch.)

Q. Not that you recall. Do you recall any gift from 1913 to 1930, at one time of ten thousand dollars?

Mr. Murray: If Your Honor please, I object to that as being definitely leading.

The Judge: Well, it is a little leading, but I think it is perhaps preliminary. The objection will be overruled.

By Mr. Chargin:

Q. You may proceed.

A. These things I do recall, yes, even if they are leading. My father did give me a gift of ten thousand [44] dollars.

Q. When did he give you that, have you any idea?

A. Oh, I don't remember; it was between the time he gave me the flats and I got the other money from him.

Q. How was it given to you?

A. It was given to me in cash.

Q. I see. At one time? A. Yes.

Q. I see. What was the condition of your father's health in 1938 and '37?

Mr. Murray: We object to that, if Your Honor please, calling for conclusion of the witness.

Mr. Chargin: I will put it the other way:

(Testimony of George Adolph Koch.)

By Mr. Chargin:

Q. Was your father suffering from any illness in 1937?

Mr. Murray: Object to that, if Your Honor please, calling for conclusion.

The Judge: Well, he may state facts, whatever they are, of what he, himself, observed as to his apparent condition.

A. You want me to state the facts? I never had ever seen my father sick in his life, and he never had a sick day or a doctor in his life that I ever knew of until he was hit with an automobile. [45]

By Mr. Chargin:

Q. When was he hit with an automobile?

A. Oh, I just don't remember the date. You have the records of it there. A few years, five or six or seven years before he died.

Q. Some seven years before he died?

A. Yes. But I never saw my father ever have a sick day in his life.

Q. And do you know the circumstances under which he was hit?

A. If I can recall it, he was going to some kind of a Masonic meeting or to a banquet up here on San Pedro and Market Street. He was always a man that was very active and rushing around, and he rushed across the street and he didn't see the automobile and it hit him. Those are the only facts that I know of.

Q. Was he a pedestrian, walking?

(Testimony of George Adolph Koch.)

A. Yes, he was walking.

Q. I see.

A. I might say along that line, if you want facts, that I believe Mrs. Compton wanted to get a doctor, and he wouldn't have a doctor. Then the insurance company came to see him and he said "I don't want to see you." They wanted to make a settlement. He says "I don't ask for any settlement." But I believe they forced \$500.00 on him, but he [46] gave it away to charity or something. I just don't remember the facts.

Q. What portion of his body was injured at that time?

A. He was hit right back here (indicating left hip) and I didn't realize how bad he was hurt until Mrs. Compton showed me when he was in bed one time. He had quite a hole in his back there. I was really surprised. You could put your fist in it. But that came from that automobile injury

Q. Did that injury give him any subsequent trouble or bother?

A. Well, he used to say—He said "There is nothing the matter with me," he said, "this automobile injury has come back on me." That is the only thing that he ever mentioned.

Q. Did you visit your father very often in 1938 or '39?

A. I moved to San Francisco in 1908, and I made an average trip to see my mother and father of twice a week during those thirty years. And I

(Testimony of George Adolph Koch.)

kept that up continually during the last thirty years. Sometimes I came oftener than that. When my mother was sick I came down every night.

Q. Was your father—what was his business activity during the years 1937 and '38 and '39, if you know?

A. Well, he naturally had his own business to take care of, [47] but he was active in the Building & Loan Association.

Q. Which Building & Loan Association?

A. San Jose Building & Loan Association.

Q. San Jose Building & Loan Association. And what was his capacity with regard to that association? A. He was a director, then.

Q. He was a director there?

A. He had been president for years, and then they sold the institution; they kept him on for five years for good will, and then the institution went through the wringer, like a lot of institutions, after he left, so at his age they asked the man to come back and take a directorship and an active interest to put the institution back on its feet again. And today it is one of our leading institutions and in good financial shape. He was over eighty years of age at that time.

Q. Your father was eighty years of age when he went back? A. Over that.

Q. (Continuing) To active participation?

A. I think he was eighty-two.

Q. And what was his position on the Board?

(Testimony of George Adolph Koch.)

A. I don't know. I think he was a director.

Q. Just a director. Now, with reference to the gift that you received to go in the stock and bond business: [48] Would you please relate as to what took place with regard to that business? Did that business fail?

A. Well, I was a partner, and there were thirteen of us. Mr. Gorman had 51 percent interest. He took a position on a stock called General Theaters Equipment, a confidential position, where in a pool we were to keep the price of the stock up to 60—which they didn't pool in those days—the stock dropped to four or five and the institution failed. So, that is the story.

Q. And when you failed did you have any personal liability under that setup?

A. Well, we all had a personal liability, and as partners, and we all went through bankruptcy. The firm went—we went through bankruptcy for a million dollars individually, apiece.

Q. And what year was that you went through bankruptcy?

A. Oh, it took about six or seven years to clean it up. I don't remember.

Q. Do you know whether your father had made any wills during that time, about that period, around '30, '35, for or on your behalf?

A. Well, he had made a will, but I didn't ask him what his will was. But during that time I

(Testimony of George Adolph Koch.)

had a brother-in-law whose father was very ill, and my brother-in-law was [49] also in the stock and bond business, and his attorney made a spendthrift will for him, and I told my father about it, and my father, to protect me, made a spendthrift will at the time covering me. I believe after he died he changed that spendthrift will to the will that is on record today.

Q. You mean after that time, not after he died. After that time he changed his will again?

A. I mean to say after the bankruptcy was settled.

Q. Yes.

A. He changed the spendthrift will to the will that is on record today.

Q. I see. A. Is that clear? [50]

Q. On or about December 28th, 1938, did your father give you any money? A. Yes.

Q. All right. And how much was it?

A. Well, I just can't recall the amounts. I'll say this, if I can tell my story it would be better, Judge.

Q. No, haven't you an idea of about how much it was?

A. Yes and no. I will say this: My sister died at childbirth and left a boy, and my father left this boy and myself money, and on account of difficulties with the boy's new mother, my father and the stepmother had difficulties on account of the boy being

(Testimony of George Adolph Koch.)

educated. The boy lived with my mother and father until he was, oh, seventeen or eighteen years of age. [51]

Q. What was this boy's name?

A. Ralph Swickard.

Q. And what relation was he to you?

A. He is my nephew.

Q. Yes.

A. And this boy was closer to my folks than I was. It was one of those things where my mother and father took it much to heart. My sister died and they wanted him to have everything, especially what my boy has. I have a boy and he went to Stanford.

Q. Apart from your own matters.

A. All right.

Q. What happened about the delivering to you of any money at that time, at or about that time?

A. Well—

Q. Or securities?

A. He wanted this boy to have a good education, and he wanted him to go to Stanford. So he gave him some securities to take care of his education.

Q. Yes.

A. At the same time he said he wanted to give me a like amount, and that was the amount that was given to me the first time.

Q. You don't recall the amount?

A. No, I don't know what it was. [52]

(Testimony of George Adolph Koch.)

Q. Who was present when these were given to you?

A. I don't think there was anybody present that I know of. I don't remember anybody.

Q. Well, where were they given to you, what place, at the home or uptown, or where?

A. Why no, he had a safe deposit box. I already had his key. And I just don't remember, I suppose we went down to the bank, and we took the securities that way. I got them and transferred them. I just don't remember how we handled them.

Q. Was there anything in writing at that time, made at that time? A. Not that I remember.

Q. Not that you remember. Did he give anything to the boy, the grandson, at that time?

A. In the way of money or securities?

Q. Or securities, yes.

A. Why, I just—I don't remember. I believe there were securities transferred at that time.

Q. I see.

A. I think there was some money given at that time, too.

Q. In December of 1938, was your father able to get about? A. Yes. [53]

Q. Or was he bedridden? He was able to get about? A. That's right.

Q. Did he own an automobile at that time, during the year '38? A. Yes.

(Testimony of George Adolph Koch.)

Q. Was he able to drive it, himself?

A. Yes.

Q. What kind of an automobile was it?

A. Dodge coupe.

Q. Dodge. Did you ever see him driving the automobile? A. Sure.

Q. Do you know whether he ever drove the automobile in 1939?

A. I don't remember. I think he drove it right up until the time he was sick. He had been up to see me in San Francisco just previous to that.

Q. What time was that when he came up to see you and drove his car?

Mr. Murray: Well, just a minute. I object to that question, when you say "he drove his car."

By Mr. Chargin:

Q. All right, what time did he come up to see you, do you know?

A. I can't remember. Just previously to the time [54] he got sick.

Q. Well, when did he get sick?

A. Well, I don't just recall the exact date. It is on record there.

Q. When he came to see you how did he get to San Francisco? A. Drove his automobile.

Q. He drove his automobile. And are you able to state whether in '38, or '39, or '37, or when?

A. I can't tell you; it was right before he got sick.

(Testimony of George Adolph Koch.)

Q. Well, how long? I will put it this way: With reference to time, how much previous to his death was this?

A. I wouldn't be able to say, I don't remember. It is so far back.

Q. Wouldn't be able to say. With regard to the transfers made in January of 1939, do you recall the circumstances under which they were made to you?

A. Well, I suppose the same way as the other transfers; they were just transferred to me, given to me.

Q. Do you know how much, Mr. Koch?

A. How much?

Q. Yes, how much it was in January, about, that you received, in 1939?

A. No, I don't. I just don't recall that.

Q. You do not recall. Do you know how much money [55] your father left at the time of his death, other than the transfers made to you and your nephew?

A. Oh, roughly I would say one hundred and twenty-five to fifty thousand dollars.

Q. One hundred and twenty-five to fifty thousand dollars. That is additional, besides the money that was given to you and to—

A. That's right.

Q. (Continuing) Ralph Swickard?

A. That's right.

Q. Where is Ralph today?

(Testimony of George Adolph Koch.)

A. Well, he was inducted, went to Monterey, and I heard that he was up to Pittsburgh, up to Camp Pittsburgh, so I drove up there last Sunday to see him, and waited for a couple of hours, and they were unable to get him. And I got a letter from him yesterday—he didn't mention where he was going or what he was doing—but I understand that is a point of embarkation. His mother, I called her up, she told me that he said he thought he was on his way to Australia. They will only give the boy a four-hour furlough.

Q. He is not available, then, for this proceeding? A. I couldn't even see him.

Q. All right. When you say "she" you referred to his mother? A. His stepmother. [56]

Q. His stepmother. And where is his father at the present time?

A. His father died two days before he was inducted.

Q. All right. His father is now dead. To recall the circumstances or what happened to your father on or about the day previous to his death, where were you on the 28th of June, of 1939, with regard to your father?

A. Well, I wouldn't say the exact date, but—you say the day before he died?

Q. Yes, a day or two before his death.

A. Well, I came down, oh, several days before. I am pretty sure I came down the day before he died.

(Testimony of George Adolph Koch.)

Q. Yes.

A. And I was in San Francisco and I was manager of the Whitecomb Hotel, I was there at the time, and I came down that night like I had been down several nights before, and days before.

Q. And where was your father when you came down to see him? A. Pardon me?

Q. Where was your father when you came down to see him? A. He was in the front room.

Q. Yes. Was he up and around or bedridden, or what?

A. No, he wasn't in bed; he was in the front room, [57] sitting in a chair.

Q. What was his condition, as to his health, then?

Mr. Murray: Object to that, if Your Honor please, except from observation.

Mr. Chargin: Well, all right.

By Mr. Chargin:

Q. What did you observe as to his condition at that time?

A. Well, I didn't observe that he was any different than he had been previous, on the days that I had seen him before.

Q. All right. When did he die, and under what circumstances?

Mr. Murray: Object to that "under what circumstances."

The Judge: Were you present?

A. Yes. Mrs. Compton phoned me, she said

(Testimony of George Adolph Koch.)

"Your father wants you to come right away." So I got in the machine and came down. And he was in bed, and he said "George, I can't stand this any longer," he says, "get Dr. McGinty," he said, "to take me to the hospital and relieve me of this pain." I think he had urine pressure. But he said, "You will have to do something for me." So I went next door and called Dr. McGinty, and the doctor said, "Well, what do you want to do, George?" And I said, "Well, I want— [58] my father wants to be relieved." He said, "Yes." He was right there talking to us. He said, "Yes, Doctor, I want to be relieved." So, we called an ambulance and we took him to the San Jose Hospital, and I went with him.

Q. I see. And do you know what date that was that he was taken to the San Jose Hospital?

A. No, I haven't the record of the date.

Q. How soon after that time that he was taken to the hospital did he pass away?

A. Well, I see the doctor just came in—

Q. You were there?

A. Four or five hours; I just don't remember.

Q. Four or five hours. In other words, we want you to testify to whatever you know about the transaction, that is all. A. All right.

Q. We will have other witnesses.

A. Four or five hours.

Q. Four or five hours. And what time of the day or night was he taken to the hospital?

(Testimony of George Adolph Koch.)

A. In the morning about nine or ten o'clock.

Q. I see. And you say that when you first got there he was in bed. Do you know how long previous to that time he had been in bed?

A. No, I don't. [59]

Q. When he said to you he couldn't stand it any longer, what was he referring to?

A. Well, I think he had pressure, urine pressure.

Q. I see. He was complaining to you about being ill? A. Pardon me?

Q. He was complaining to you about being ill?

A. Well, he didn't—No, he said he was in pain. He didn't say he was ill, he said he was in pain.

Q. Yes. Did he tell you how it came about or anything, did he tell you how it came about, how he happened to have pain?

A. No, he didn't say anything.

Q. So your testimony is that he died the following day, or that same day?

A. He died that day.

Q. Yes. In the afternoon or morning?

A. Oh, I don't just remember.

Q. Were you a trustee for your nephew, Ralph Swickard? A. That's right.

Q. And a trustee of what?

A. Well, trustee of his securities.

Q. How much were they, any idea?

A. Now or then?

(Testimony of George Adolph Koch.)

Q. Then. [60]

A. Whatever the trust was at the time. I don't remember. I think it was around seventy-five or eighty thousand dollars.

Q. Seventy-five or eighty thousand dollars. And do you know when you became a trustee, about?

A. No, I don't.

Q. You don't. Was that trust oral or was it evidenced by a writing?

A. It was a written trust.

Q. How did it come about that you put it in writing? A. I didn't have it put in writing.

Q. What were the circumstances?

A. My father did.

Q. Your father did. Well, who did it, if you know, and when? A. Faber Johnston.

Q. I see. And did you sign the trust?

A. I don't remember.

Q. You don't remember. Do you know whether he went to Mr. Johnston's office?

A. Oh, he went there many times.

Q. Many times. Who is Mr. Johnston?

A. Mr. Johnston?

Q. Yes. A. He was my father's attorney.

[61]

Q. He was your father's attorney. How long was he attorney for your father?

A. Why, I guess all his life; his father was his attorney, I think, previous to the time that he was. [62]

DR. LELAND ALONZO CHILDERS

was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

The Clerk: And your full name?

The Witness: Dr. Leland Alonzo Childers.

Direct Examination

By Mr. Chargin:

Q. Dr. Childers, what is your profession?

A. Practitioner of medicine and surgeon.

Q. You are a surgeon and doctor of medicine.

How long have you so been? [63]

A. I have been practicing in San Jose fifteen years and a half.

Q. And are you licensed, duly licensed to practice medicine in the State of California?

A. I am.

Q. And for how many years?

A. Fifteen and a half years.

Q. Fifteen. And previous to that time?

A. Shrevesport, Louisiana; one year.

Q. And from what university did you graduate?

A. Tulane University, Louisiana, in 1926.

Mr. Chargin: Now, just preliminarily, this is not for the purpose of introducing testimony from this witness. This man we would like to use as an expert to pass upon some testimony that will be elicited later on with regard to blood pressure and pulse of the decedent. There will be evidence brought out in the trial by subsequent doctors.

(Testimony of Dr. Leland Alonzo Childers.)

By Mr. Chargin:

Q. Now, Doctor, if we have testimony in this case that would indicate that a man 83 or 84 years of age had a pulse of about 78, would it be possible under that condition to be suffering from a stroke at that time, with a pulse of 78?

A. A pulse of 78 wouldn't have any bearing— [64]

Mr. Murray: (Interposing) Just a minute. We will object to that as assuming facts not in the record; and furthermore on the basis that it calls for a conclusion that Your Honor is called upon to make, the matter of whether this man could have a stroke or whether he couldn't is only one point in the evidence in issue before this court. And I object to that as calling for conclusion and assuming facts not in evidence.

Mr. Chargin: Well, I am faced with this situation, if the Court please: I realize that it is certainly proper; this is all medical testimony first as to what will take place, and then have the expert give his opinion as to the condition, based upon that evidence. However, the doctor has to immediately leave, and I want to get him in here as an expert this morning some time. He has to be in San Francisco before twelve o'clock.

The Judge: Well, if I understand you correctly, you expect to show by evidence subsequently that at least one of the diagnoses showed a pulse of 78.

(Testimony of Dr. Leland Alonzo Childers.)

Mr. Chargin: Seventy-eight. And also a blood pressure, as follows: Systolic 145 and Diastolic 75.

The Judge: And you wish to elicit from this witness his opinion as to whether or not one having those symptoms would, in his opinion, have been suffering at that time from a stroke, is that correct? [65]

Mr. Chargin: That is correct; that is correct, Your Honor.

The Judge: I will permit him to answer.

Mr. Murray: May I have an exception?

The Judge: The exception may be noted.

By Mr. Chargin:

Q. Doctor, assuming that a person 83 or 84 years of age has a blood pressure, systolic of 145, diastolic of 75; a pulse of about 84; temperature 98.2, is it possible for him at that time to be suffering from a stroke?

A. It is not. The blood pressure evidence is the only evidence that we consider relative to a stroke. You asked about a pulse rate of 84 per minute, I believe. The pulse rate would have no bearing whatever upon a stroke. The mechanism of a stroke, or apoplexy, as it is commonly called, is an elevated blood pressure. The evidence given here, a systolic blood pressure of 145, diastolic—

Q. Of 75.

A. (Continuing) of 75, is considered as a normal blood pressure. So, it would be impossible with that reading at that moment, that that was taken, for the man to be suffering from a stroke.

(Testimony of Dr. Leland Alonzo Childers.)

The temperature was also mentioned. Ninety-eight—

Q. Ninety-eight point— A. Two? [66]

Q. 98.2.

A. The temperature wouldn't have any bearing, either; that is a normal temperature.

Q. That is a normal temperature?

A. Yes.

Q. Approximately what would you have to have in blood pressure to have a stroke, how high a reading? A. At least 200.

Q. About 200?

A. 200 systolic and relatively low diastolic; say 200 over 110, or 98, something like that, giving a high pulse pressure when one figure is subtracted from the other.

Mr. Chargin: That is all. You may be excused.

The Judge: Just a moment.

Cross Examination

By Mr. Murray:

Q. Doctor, I would like to ask you whether this opinion you have just given was based entirely on those figures at that moment?

A. At that moment, yes, sir.

Q. Then—

A. As a hypothetical case given.

Q. A hypothetical case. And then it would be your opinion, would it not, that that did not necessarily govern some other circumstance that may have prevailed just before [67] or just after such a time?

(Testimony of Dr. Leland Alonzo Childers.)

A. In order for the blood pressure to be elevated to the dangerous degree or approaching that of a stroke, it would require some severe activity of some sort.

Q. Yes, but it doesn't necessarily follow that that couldn't happen, is that right?

A. That's right. If the man were under some undue stress or emotion or exercise, or something of the sort. However, if he were remaining quiet, it is my opinion that the blood pressure would not be materially influenced from this which was stated.

Q. Doctor, I would like to ask you this: Would it not be possible for blood pressure to immediately descend from the 200 you were speaking about, right after a stroke?

A. No. There wouldn't be any material descent in the blood pressure following a stroke.

Q. You mean not at all?

A. There would be some, yes, sir, but it wouldn't descend to 145, unless the man were in complete collapse.

Q. You mean it never would again, or just immediately after?

A. Immediately afterwards. The chances are the pressure would be decreased somewhat from that. As we know the mechanism of a stroke is a breaking of the artery in the brain, that would no doubt lower the pressure to a [68] certain degree. In many cases death ensues at that time, and naturally the blood pressure goes straight on

(Testimony of Dr. Leland Alonzo Childers.)

down to zero, never does return. But where the stroke has not been fatal, the chances are the blood pressure would not be a great deal different. We will say in a hypothetical case of a man having a blood pressure of 220, he has a stroke, immediately afterwards if you would take the pressure maybe it would be down to 180. There would be an elevated blood pressure. It would not be a normal blood pressure.

Mr. Murray: That is all.

Redirect Examination

By Mr. Chargin:

Q. That blood pressure as indicated, would be normal for a man his age? A. 145 over 80?

Q. Yes.

A. Yes, that would be a normal blood pressure.

Mr. Chargin: All right. No further questions.

The Witness: Thank you.

(Witness excused.)

Mr. Chargin: Mr. Johnston, Faber Johnston.

Whereupon

FABER L. JOHNSTON

was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified [69] as follows:

The Clerk: Give your name, please.

The Witness: Faber L. Johnston.

(Testimony of Faber L. Johnston.)

Direct Examination

By Mr. Chargin:

Q. Where do you reside, Mr. Johnston?

A. 1220 Hedding Street, San Jose, California.

Q. And what is your occupation?

A. Attorney at Law.

Q. Did you know Mr. Adolph J. Koch during his lifetime?

A. I have known him for a great number of years; I couldn't say exactly, but over thirty years.

Q. You are an attorney at law?

A. Attorney at Law.

Q. Duly licensed to practice in this state?

A. Yes.

Q. And how long have you been practicing in San Jose? A. Since 1915.

Q. Did you ever have professional dealings with Mr. Koch?

A. Well, the first matter I handled for him personally, entirely, I believe was in 1917 or 1918.

Q. Yes. [70]

A. Around that time. Before that I was in the law office with my father, and my father's office was counsel for Mr. Koch.

Q. I see. Did you, during the latter part of his life, become his counsel?

A. I was counsel for Mr. Koch. In fact, we were quite friendly and he used to come in my office and consult with me practically with reference to every investment he made, or business transaction which he made.

(Testimony of Faber L. Johnston.)

Q. Over what period of time?

A. Over the last ten or fifteen years of his lifetime.

Q. The last ten or fifteen years of his lifetime. Are you the attorney, or were the attorney for the San Jose Building & Loan Association?

A. I am counsel for them now, and I was counsel for them from 1919 to 1935. And from 1935 to '37, about '37, I was no longer counsel for them, although I was on the Board of Directors. Since that time I have been counsel for them.

Q. Since that time you were counsel?

A. At the present time I am counsel.

Q. Well, being counsel for the Building & Loan, did you meet Mr. Koch in a business way?

A. Mr. Koch—I don't remember the date—but Mr. Koch was appointed a director of the Association. I was [71] counsel for the association prior to his being made a director. After he was a director of the association he was president of the company for quite a number of years; I was counsel for it during that time.

Q. And as counsel you had then business dealings with Mr. Koch?

A. Practically every day.

Q. Yes. Did you attend the meetings of the Board of Directors during the year 1938?

A. I did.

Q. And did you see Mr. Koch at any of these meetings?

A. My recollection at first was that I saw him

(Testimony of Faber L. Johnston.)
at every meeting; in checking the record I find that he was absent at two meetings.

Q. Absent two meetings for what period of time?

A. Well, I think it was two monthly meetings. They only had their meetings once a month, as a rule, unless there was something special.

Q. I mean, what year was this that you referred to? A. I think it was in 1938.

Q. '38. Do you know whether you ever saw him at a meeting of the association in 1939?

A. I don't remember or recall seeing him at a meeting of the Board of Directors, but I do know of seeing him at a meeting of the Securities or Finance Committee of the [72] company, several times in the directors' room, when I would call at the office he would be sitting in the back room talking with some of the officers of the company in connection with their loans.

Q. And that was in what year?

A. '39, I believe.

Q. '39. When did you see him previous to his death, the last time previous to his death?

A. Well, I saw him at least four or five days or a week prior to his death.

Q. Where did you see him?

A. At his home.

Q. At his what? A. At his home.

Q. At his home. Did you ever see him in your office previous to his death, and if so, about what time?

(Testimony of Faber L. Johnston.)

A. He called at my office at least once or twice.

Q. Yes.

A. Within—sometime in the first part of '39, I don't remember the date. I saw him at the Building & Loan Association a couple of times, and I used to talk with him there and then help—walk with him across the street to the First National Bank. Because my office was in the First National Bank Building and the Building & Loan Association Office is almost directly across the street. [73]

Q. And do you know how he would either come or go from the Building & Loan Association during 1938?

A. Well—in 1938?

Q. Yes, '38.

A. Well, sometimes he walked down.

Q. I see. Do you know—

A. Sometimes Mr. Cowell, the association employee, would go down and get him in the automobile of the association. He worked for the association.

Q. Where did Mr. Koch live?

A. He lived on South Third Street. I don't remember the number.

Q. And about how far is that in number of blocks from the Building & Loan Association?

A. About five blocks, I should judge. Four or five blocks.

Q. Four or five blocks. And in some cases you say he walked to and from the association?

A. Sometimes. He told me he walked down; I never saw him walk down.

(Testimony of Faber L. Johnston.)

Q. Did you know that he walked over to the First National Building from there?

A. He walked over because I walked over with him.

Q. Did you prepare any wills for Mr. Koch?

A. I prepared several wills for Mr. Koch. [74]

Q. Several of them. You heard Mr. Koch, George Koch, testify about the preparation of a spendthrift provision of the will. Do you recall the circumstances under which that was executed and made?

A. Well, in 1931, latter part of '31 or first part of '32, Mr. Koch came into my office, and he had been talking about his son George who had lost considerable in the failure of Gorman Kaiser Company, and he was going to transfer to him certain stocks and securities which he had. He asked me about it. As I remember—this is my recollection—it is my thought that he was going to transfer him a large number of shares of American T. & T. and some money. And I told him at that time that George Koch, because of the failure of Gorman Kaiser Company, and because of his being a partner in that company, had a contingent liability because of its debts, and that if he transferred any property to George, if they sued him on it, he would probably lose it. And I suggested that the only way he should do was to make a will in which he tied it up so that his creditors could not attach the property, and place it in trust.

Q. Then later on was that spendthrift provision cancelled?

(Testimony of Faber L. Johnston.)

A. In February, in 1932, such a will was prepared and drawn. I have the original will here in the court, but with the signatures torn off. I didn't know that I had it [75] until this morning. I picked up a file which had some old wills in it. And Mr. Koch cut off the signatures. And that was made in about February 23rd, 1932, in which the spendthrift trust was created of property for Mr. George Koch, and another trust was created for Mr. Ralph J. Swickard.

Q. Did you subsequently prepare some more wills for Mr. Koch?

A. I prepared two—three more wills, as I remember, and two codicils. I don't remember the dates, but there was one in '33; there was a codicil in April, '33, and there was one, I think, maybe in '34, and maybe in '35. The date of the will which was probated, I drew.

Q. Did Mr. Koch make any statements to you about transfers to his son during that period of time, during, say, around 1935, '34 or '33?

A. Well, Mr. Koch a lot of times talked to me about transferring property to George and transferring property to Ralph, the grandson. And he had told me that he had made certain transfers and Christmas presents—this is only what he told me.

Q. Yes.

A. He had given George and he gave his daughter in her lifetime certain gifts, Christmas gifts at the time. It is my recollection that at one time

(Testimony of Faber L. Johnston.)

he gave George Koch ten thousand dollars as a Christmas present, because he told [76] me and he showed me—it wasn't in cash, it was stock certificates which he had—and he showed me, he said "I am giving this to George for Christmas."

Q. Do you know what year that was, about?

A. No, but it was a long time prior to 1930.

Q. Yes. Do you recall preparing a trust agreement sometime in about 1938?

A. I drafted an agreement creating a trust for Ralph J. Swickard in 19—I think it was dated December 20, 1938. That is my recollection of it.

Q. December of 1938. And who was the trustor under that agreement?

A. Mr. Koch, George A. Koch. I can tell the facts under which that agreement was prepared, if you wish me to state directly how it was prepared.

Q. I was going to ask you that: Who was trustee under that? A. Mr. George Koch.

Q. The son?

A. You mean the beneficiary was Ralph J. Swickard?

Q. That's right. But George was the trustee and Adolph was the trustor, is that right?

A. Yes, and Adolph J. Koch was the trustor. [77]

(Whereupon the document above referred to was marked Petitioner's and Respondent's Joint Exhibit A-1, and received into evidence.)

(Testimony of Faber L. Johnston.)

[Printer's Note: Petitioner's and Respondent's Joint Exhibit A-1 is set out at page 172 of this printed record.] [79]

By Mr. Chargin:

Q. I show you that document, Mr. Johnston, and ask you whether or not you prepared that document? A. I prepared this document.

Q. And at whose request did you prepare it?

A. On December 20, 1938, Mr. George Koch telephoned me at my office and told me that his father had transferred certain cash and securities to him for Ralph Swickard, and had transferred certain other securities to himself, and he asked me—he wanted something to protect him, something in writing to protect him as against the father of Ralph Swickard and the stepmother, who were objecting to his grandfather, A. J. Koch, furnishing Ralph money to go to Stanford University. And I suggested that perhaps we could draw up a simple trust agreement. So he told me to get a list of the securities from Mr. Hellwig, who would be able to furnish them; that he would give Mr. Hellwig a list of those securities. I phoned Mr. Hellwig and got the list. I went down and talked to Mr. Koch personally to find out what the matter was and to see what sort of provision. So he suggested that we put it along the lines of tying it up in George's hands until Ralph should be thirty-five years of age—the way I remember it—I have forgotten this—(referring to document). Yes, that

(Testimony of Faber L. Johnston.)

is correct, according to the trust agreement. And if anything should happen to [80] Ralph, it should go to George himself, outright; and if anything should happen to George it should go to George's son, Kenneth Koch. So I then prepared a document, this document, as a tentative form and mailed two copies of it by letter to Mr. George Koch at the Hotel Whitcomb in San Francisco. I didn't see the agreement until sometime afterwards, when it was signed by both parties. In my letter I suggested that it should be signed by both him and his father, as he was the beneficiary under the trust.

Q. I see. Mr. Koch, the trustee, was also a contingent beneficiary?

A. Beneficiary, named in that, under the trust.

Q. Do you recall that in the meeting of the directors of the Building & Loan Association sometime during the latter part of 1938 a discussion had with the directors and Mr. Koch concerning a loan, a large loan, with the Paramount Hotel Company?

A. The Paramount Hotel Company owned the association over half a million dollars at one time—I don't remember the exact balance at the time of that discussion—and they were asking to pay off the loan without penalty. And for a long time the association would not accept the money without charging it two percent payoff. The discussion involved the business principle involved. And Mr. Koch talked to the directors and suggested that in a matter of the amount of [81] the loan of that

(Testimony of Faber L. Johnston.)

size, it was better to take the money and use it without penalty, because smaller loans were much more advantageous to a loaning company than one large loan. And as I recollect it, Mr. Koch proposed a resolution to the Board of Directors that the company accept the payoff, and the matter was carried unanimously, as I remember it.

Q. Was that done in your presence?

A. It was done in my presence. I was a member of the Board at that time, as I remember it.

Q. And do you recall what time of the year in '38 that took place?

A. The records will show. I don't know. It was sometime in 1938. I think it was sometime in the early part of the year, around March, but it might have been later, I can't say.

Q. You stated, I believe, that shortly before the death of Mr. Koch you were down to see him at his home, is that correct?

A. That is correct.

Q. How long before his death, do you know?

A. Well, I used to go by there—My sister-in-law lived on the same street, about three blocks beyond there, and my wife used to go over to see her mother, at this time who had been sick, and I used to go over and get my wife, and I would go by there maybe three or four or five times a [82] week, and if Mr. Koch would be sitting out on the porch or in the window I would stop in and talk with him.

(Testimony of Faber L. Johnston.)

Q. When you would drop in to see him, what did you observe with regard to his physical condition?

A. His physical condition was fine, in this way: He was complaining about his leg, in fact, ever after he was hit by an automobile at one time, he complained about his leg, and he said all this trouble had been from that. Notice now, I have been told, I never saw it, that he had an indentation in his back where the machine struck him. Well, he limped and walked around with a cane; right after the accident for awhile he would use a crutch, and then he would throw it away. And he was a very energetic man, and he didn't like to have any handicap. But most of the time when I saw him, he was sitting on the porch of his house or in the front room looking out the window.

Q. Did you at any time ever see him bedridden, to your knowledge?

A. I don't remember ever seeing him. I ~~have~~ been at his home when he was in bed at night, yes, called by there at night a couple of times. One time when George was there I dropped in to see George, and his father had gone to bed, but he was a man that got up about five o'clock in the morning and shaved, and he went to bed early.

Q. And what was his attitude with regard to being [83] cheerful, or the contrary, what was his conduct, demeanor?

A. Well, he was a versatile gentleman, and he

(Testimony of Faber L. Johnston.)

had a lot of pet sayings, and he talked business. He was always in good spirits. I never saw him down in spirit in my life.

Q. And you would say that condition existed to just previous to his death, so far as you know, in your visits with him?

A. Why, always that way, as far as I know.

Q. And do you recall the last visit up to the time of his death, how close the last visit that you saw him?

A. I can't remember, but I think it was within the last two or three days.

Q. Within the last two or three days. Did Mr. Koch ever tell you about his intention to make any gift to George, or discuss it with you in your office?

A. He discussed it with me in my office.

Q. Yes.

A. He came into my office one day and he said—

Q. Give the date, the approximate time, do you know the year?

A. Well, I think it was sometime in—I know it was in 1938.

Q. Thirty-eight.

A. He came into my office, and he said that Ralph Swickard's father refused to send the boy to college, that [84] he said he couldn't afford it. He said he was going to send him to college and that Mr. Swickard objected to it; and that he was going to send Ralph to college and that he gave him

(Testimony of Faber L. Johnston.)

\$500.00 to start him out at the start, \$500.00 to start there, and the boy spent the money too fast. Now, I could go on and explain the rest of what he told me later on. Because before I put that in the trust agreement he told me that Mr. Swickard, the boy's father, and the stepmother, were objecting to the boy having any property, or objecting to him giving any money to the boy, and that they wouldn't allow him to live at home; they made him go out in the back yard and live. And that he was going to fix it so the boy would be absolutely independent and that his father or his stepmother would have nothing to do with the boy's business. And that is why he was transferring this property to the boy so he would be absolutely independent of his stepmother and father.

Q. Were there any discussions at that time about giving money to George, the son?

A. He gave George a like amount. Because he said "If I am giving this"—He talked to me prior several times about transferring property to George, which was of a greater amount than the amount which he actually transferred.

Q. What amount did he discuss he was going to give that was larger than that seventy-nine thousand? [85]

A. Well, at one time he was going to give him one hundred thousand dollars in securities.

Q. When did he say that, if you know?

A. Well, I think if I remember right it was in 1932, prior to the first spendthrift will.

(Testimony of Faber L. Johnston.)

Q. And do you know why he didn't give it to him? A. Because I advised him not to.

Q. I see. Did you put George through bankruptcy in '35?

A. I had nothing to do with the case.

Q. I see. Do you know whether Mr. Koch owned an automobile in 1938?

A. Yes, because in 1938 the Motor Vehicle Department, the head of the Motor Vehicle Department called me and told me that Mr. Koch had come in for an automobile license, to renew his automobile driver's license, and that his eyesight was such that he couldn't read the letters and asked me about it. I told him that the old gentleman was using a pair of store glasses that he had had for years, and if he had his eyes examined that he could see all right, so I suggested that he go and have his eyes examined, which he did, and had a new pair of glasses made. He passed the examination and the Department issued him a driver's license.

Q. And was that in the year 1938?

A. If I remember right it was in April, 1938.

[86]

Q. I see. And at that time he owned an automobile. And did you ever see him operating one?

A. Yes, he drove it. He came out to my house to dinner one night and he drove out.

Q. Did you have a discussion with Mr. Koch concerning a transfer of real property by the will of Mary E. Doar, or Martha E. Doar, rather?

(Testimony of Faber L. Johnston.)

A. I talked with Mr. Koch about that for the reason that the will of Martha Doar, as I remember it, at one time provided that that property was to go to Ralph and to George Koch, and when George Koch became involved in the Gorman-Kaiser matter the property was put in A. J. Koch's name for them so that it wouldn't appear of record in George's name and be subject to creditors' claims. And as I remember it, the will was changed so that the property was left to A. J. Koch, and subsequently that property was transferred by deeds [87] from A. J. Koch to George Koch and Ralph Swickard. The deeds were placed in escrow in my hands with written instructions to hold until he died. Long prior to his death, I don't remember the exact date, but I think that I have the written memorandum in my files somewhere, he instructed me to deliver the deeds then, in his lifetime, which I did.

Q. And what property did that affect, do you recall?

A. It affects the property on Third Street, as I remember.

Q. Third Street?

A. And I don't remember whether it affected other property or not. But there was a piece of property right near where he lived, which I remember was transferred.

Q. All right. [88]

DR. EMIL LESTER COTTRELL

was called as a witness for and on behalf of the Respondent and having been first duly sworn was examined and testified as follows:

The Clerk: What is your name, please?

The Witness: Emil Lester Cottrell. [89]

Direct Examination

By Mr. Murray:

Q. Dr. Cottrell, the reporter has your name, I presume, and address?

The Reporter: I haven't the address.

A. San Jose, California.

By Mr. Murray:

Q. Dr. Cottrell, how long have you been a medical doctor? A. I graduated in 1903.

Q. From what school, please?

A. Jefferson Medical College.

Mr. Chargin: We stipulate to his qualifications to save time.

Mr. Murray: I wanted to get his background in the record, is all.

By Mr. Murray:

Q. And how long have you been a practicing physician in San Jose?

A. I entered the practice in 1924.

Q. And do you have— A. In San Jose.

Q. In San Jose. And you have practiced here ever since? A. I have. [90]

Q. Now, in the course of your profession did

(Testimony of Dr. Emil Lester Cottrell.)
you attend Mr. Adolph Koch, the decedent in this case? A. I did.

Q. And have you brought records of your office with respect to such professional attention?

A. I have.

Q. Will you state the first time you were called to attend Mr. Koch?

A. I was called to see Mr. Koch on May 18th, 1938.

Q. And who called you in to see him?

A. I do not know; it came over the telephone.

Q. I see. You were called to his home?

A. I was.

Q. And when you first saw him where was he?

A. He was in bed.

Q. And you examined him immediately?

A. I did.

Q. And what was your diagnosis of his situation at that time?

A. That he had had a paralytic stroke.

Q. Did you determine just when, at what time before your call he had had this paralytic stroke?

A. Not exactly in minutes and hours.

Q. But sometime soon?

A. Sometime recently before 5:15 P. M. on that date. [91]

Q. Now, who else did you find at the house—I might ask, was there anyone attending him at the time or taking care of him?

A. I think there was an untrained nurse.

(Testimony of Dr. Emil Lester Cottrell.)

Q. Do you recall her name? A. I do not.

Q. Well, if I suggested "Mrs. Compton" would that sound like it? A. That is the lady.

Q. Did you have a conversation with her about his condition just before you came in? Did you ask her—I will withdraw that question. Did you ask her what had transpired with respect to him before you came in on that day of May 18th?

A. You mean before I met Mr. Koch, himself?

Q. Yes.

A. I think when I entered the house I asked her what had happened.

Q. And do you recall what she said?

A. I think she said that he had a fall.

Q. Did she say where he had fallen?

A. If I remember correctly, he fell near the bed.

Q. Yes. Now, what did you—I will withdraw that question. Now, when was the next time you called on Mr. Koch, Dr. Cottrell? [92]

A. I called on him May 21st, 1938.

Q. That was a few days later than the first call?

A. Yes.

Q. And in what condition did you find him at that time?

A. Well, I found him bedridden, and he was unable to use his left hand and left lower extremity.

Q. And then did you call on him quite often after that for a period? A. I did.

Q. Would you state how many other calls you

(Testimony of Dr. Emil Lester Cottrell.)

made and the dates, immediately following that second call?

A. I called on him May 22nd, 1938; May 23rd, 1938; May 24th, '38; May 25th, '38; May 26th, '38; May 27th, '38; May 28th, '38; May 30th, '38; May 31st, '38; June 1st, '38; June 2nd, 3rd, 4th, 5th, '38; June 6th, 7th, 8th, 9th and 10th, '38; June the 12th, 13th, 14th, 16th, 17th, 18th and 19th, '38; June 20th 1938; June 22nd, 1938.

Q. And your last call in that series, at least, was on June 22nd, 1938? A. Right.

Q. And what was the condition of Mr. Koch at the time of your last call?

A. There was much improvement in his left leg and he was able to stand by the bed, with the use of crutches for support. [93]

Q. Now, did you see Mr. Koch either professionally or otherwise in—no, I will withdraw that question. Did you attend Mr. Koch any more during the year 1938, after June 22nd?

A. I made one other call to see him, but that was not regarding this case, this particular condition. He had an inflamed eye. I called on him December 26th, 1938.

Q. And you called on him particularly in connection with an inflamed eye? A. I did.

Q. And did you notice at that time what the condition of his left leg and arm was, with respect to usability?

A. No, I did not ask him to demonstrate because he didn't call me for that.

(Testimony of Dr. Emil Lester Cottrell.)

Q. I see. Now, did you see Mr. Koch, even though not professionally, in between those last two calls, in between June 22nd and December 26th, 1938? A. I saw him once, socially.

Q. Would you state where you saw him socially?

A. I met him at the Masonic Temple.

Q. And will you state when that was, if you can remember? A. On December 25th, 1938.

Q. And what was the occasion, if you don't mind telling? [94]

A. It was the Knight Templar breakfast given at the Masonic Temple in San Jose.

Q. And Mr. Koch was there? A. He was.

Q. Do you know how he got there?

A. No, I do not know how he got there, but he was in a wheelchair.

Q. He was in a wheelchair at the banquet or at the breakfast? A. He was; he was.

Q. And he was attended or not at the time?

A. His nurse was with him.

Q. I see. A. Mrs. Compton.

Q. Was there any other doctor or doctors in attendance with you during that first period from May to June, 1938? A. There was not.

Q. You never consulted with any other doctors in connection with it?

A. I did not. I think I offered him the privilege of having a doctor, but he didn't care to have another doctor come in.

Q. Was the fall, which I understand Mrs.

(Testimony of Dr. Emil Lester Cottrell.)

Compton told you Mr. Koch had had before you came, was it from that [95] that you determined that he had a stroke? Was it just from the knowledge that he had a fall? A. Partly.

Q. Well, what other symptoms did he have; I mean, on what else did you base your diagnosis that he had had a stroke at that time?

A. The fact that he could not use his left leg and his left arm and hand.

Q. Well, are those signs, in your opinion, pretty definite indications of a stroke? A. They are.

Q. Dr. Cottrell, did you have any knowledge of your own with respect to an automobile accident which others have testified Mr. Koch had suffered some years prior to 1938? A. I did not.

Q. Did you notice any scars or evidences of some such an accident, when you examined him?

A. I did not.

Q. Well, if Mr. Koch had a hole in his back you could put your fist in, would you not have been apt to have seen it? A. I think I would.

Q. And you didn't see such a thing?

A. I did not.

Mr. Murray: That is all, Doctor. [96]

Cross Examination

By Mr. Chargin:

Q. Dr. Cottrell, what treatment did you prescribe for Mr. Koch the day you came there, if any?

(Testimony of Dr. Emil Lester Cottrell.)

A. I advocated that he be kept in bed and be kept on a light diet; and I inquired about his intestinal tract, his bowels; whether he had passed his urine or not, and so forth.

Q. Do you know whether Mrs. Compton was a nurse, or domestic, housekeeper?

A. I understand that she was an untrained nurse.

Q. You don't know that of your own knowledge?

A. I do not.

Q. Mrs. Compton told you about a fall that he had, when you first entered? A. She did.

Q. I see. When did you take Mr. Koch's blood pressure for the first time?

A. On May 21st, 1938.

Q. That was two or three days later, is that right? A. That's right.

Q. And what was his blood pressure reading on that date?

A. Systolic pressure 145, and diastolic was 75.

Q. And his temperature at that time was practically normal? [97]

A. Practically normal; 98.2 degrees Fahrenheit.

Q. Did Mr. Koch ever say anything or report to you about his left hip or left leg, did he tell you anything about his left hip and left leg?

A. No.

Q. He did not?

A. You mean regarding the accident which he had before?

(Testimony of Dr. Emil Lester Cottrell.)

Q. No, just about any condition about his left leg or left hip?

A. No, he didn't discuss that with me.

Q. He didn't discuss that? A. No.

Q. Did you examine his back at that time?

A. I did not.

Q. You did not? A. I did not.

Q. So then as long as you didn't examine his back, you don't know whether there was a hole there or not, do you? A. No, I don't.

Q. You knew nothing about this previous accident? A. No, I did not.

Q. Did you prescribe later on—Did he have a cold or something of that kind during that period?

[98]

A. He did.

Q. You prescribed some medicine for a cough or a cold?

A. I think I did. I haven't a record of it, I think, at this time. Yes, I have a record. On May 23rd.

Q. Yes. A. I prescribed medicine.

Q. And the cough went away on the following day, or probably he discontinued the cough medicine the next day?

A. He didn't care to take medicine, so I told him he could discontinue.

Q. What was the condition of his urine on the 24th and 25th, was it normal at that time?

A. On the 24th the urine was normal.

Q. And on the 26th, his appetite was good?

(Testimony of Dr. Emil Lester Cottrell.)

A. Yes.

Q. And how were his bowels at that time?

A. Free.

Q. I see. And was his blood pressure about the same the next time you took it?

A. On May 28th the blood pressure was 140 systolic; 70 diastolic.

Q. I see. A. Practically the same.

Q. Yes. Did his nurse ever ask you subsequent to [99] that time, Mrs. Compton, the housekeeper, as to the number of visits that were necessary, or whether you had to come there anymore?

A. I think she talked with me about that and told me that Mr. Koch, George Koch, was unable to get definite information over the telephone, and he wanted me to call every day and see the patient so that she would be in a position to tell him definitely how Mr. Koch was getting along. That is why the calls were made every day instead of every two or three days.

Q. At Mr. George's request, to see that his father was taken care of properly? A. Yes.

Q. And when you discontinued your services there on the 22nd of June, was Mr. Koch then restored to normal condition? A. Oh no.

Q. You don't believe so? A. No.

Q. Well, what was his condition when you discharged him?

A. Well, he was much improved, and as I stated here, he stood by the bedside with the use of his

(Testimony of Dr. Emil Lester Cottrell.)

crutches. He was not able to walk at that time, but he might have been able to walk with the assistance of the nurse. [100]

Q. Well, would it be possible within a short time thereafter to recover from that condition?

A. Well, that would be a pretty slow process.

Q. Yes.

A. Judging from what had taken place previously.

Q. Did you subsequently see him around with either a crutch or a cane?

A. I think the next time I saw him was the—no, I saw him on December 25th, that was the next time.

Q. And on December 25th when you say he was at the Masonic Temple, do you know whether or not he made a talk or a speech that day to the group?

A. I do not remember; I do not remember.

Q. Do you know that he was in charge of that breakfast that day? A. I did not know that.

Q. You didn't know that? A. No.

Q. Do you know if it was customary for him to be in charge of those breakfasts, of that group?

A. I did.

Q. You don't recall whether Mr. Koch made a speech or a talk to the audience or group that day of that breakfast?

A. I remember that he was called on, but I don't [101] remember that he made any speech.

(Testimony of Dr. Emil Lester Cottrell.)

The only speech that I remember of, he sent word by the nurse for me to come over and see him.

Q. When you left he asked you to fill out the check for your services. Did he sign the check?

A. He did.

Q. Did you test the reflexes of Mr. Koch at the time you first diagnosed his case? A. I did.

Q. What was the condition of his reflexes on the opposite side of the head where he was supposed—

A. Well, his pupils were equal and reacted equally to light.

Q. How about the other side, the other arm and leg?

A. I didn't test the arm. I tested the right knee.

Q. And what was the effect?

A. That was all right.

Q. Was it increased any?

A. I think it was just the same. It was normal. Just normal.

Q. Well, isn't it possible, Doctor, if there is a stroke in one side of the body, of that kind, it is possible that the reflexes on the other side would be aggravated or increased, generally?

A. It might be either way. [102]

Q. It might be either way? A. Uh-huh.

Q. Isn't it generally customary that the reflexes on the opposite side are generally increased?

A. Well, I think maybe increased.

(Testimony of Dr. Emil Lester Cottrell.)

Q. Increased?

A. Yes. Because there is an irritation to the brain surface, the brain tissue.

Q. But they were not increased, they were about the same?

A. I think they were about the same, yes. [103]

LOUIS DOERR

was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Chargin:

Q. Your name is Louis Doerr? A. Yes.

Q. And where do you reside, Mr. Doerr?

A. 282 South Eighth Street, San Jose.

Q. 282 South Eighth, in this city?

A. Yes.

Q. Did you formerly live near Mr. Koch?

A. Yes, just back of him. [104]

Q. What address was that?

A. 266 South Second.

Q. And your property abutted his on the rear, is that correct? A. Yes.

Q. How long did you know Mr. Koch, Adolph Koch?

A. Well, as long as I can remember; many, many years.

(Testimony of Louis Doerr.)

Q. I see. Did you see him around the yard during the year 1938 and '39?

A. Well, I am sure I saw him in 1939; I am not so sure about—I mean 1938. I am not so sure about 1938. Although I—yes, I did see him around his own yard. Not around our yard.

Q. Yes, his own yard. And was he able to walk around? A. Yes, he walked O. K.

Q. Did he have a cane or not, as you recollect?

A. No, I think not, at the time.

Q. I see. Did you ever discuss any business matters or neighborly subjects when you met him there in the yard?

A. Mr. Koch always had an idea that that property could be sold, that is, our property and his together on Third Street, could be sold as a whole, and he was continually after us to cut the trees down on Second Street, because he thought that would interfere with the sale of the property.

Q. When did he tell you or talk about these trees?

A. Oh, almost up to the day that he passed away.

Q. Did you consider him a pretty fair and a shrewd business man? A. Yes, I'll say.

Q. And did he ever have any discussions with you about selling the property jointly, your property and his property?

A. Well, as I told you before, our property

(Testimony of Louis Doerr.)

abutted his on the rear; in other words, his property is on Third Street just back of our property on Second Street. In other words, it would make one piece of property clear through from Second to Third Street, if it could be sold that way.

Q. This property would be suitable for business purposes, is that right?

A. I just didn't get that.

Q. This property would be suitable for business property? A. Yes, surely.

Q. How far are you from the main street of town, or this property, at that time? [106]

A. Well, I don't know what you would call the main part of town. If we judge First and San Fernando Street as the key part of San Jose, we were only two blocks from there.

Q. Well, First Street is the main street of town? A. Yes.

Q. And your property is only one block away from it? A. On Second Street, yes.

Q. When you saw him around the yard, what was his condition of health, so far as you were able to observe?

A. Why, he seemed perfectly all right, so far as I could judge.

Q. How was his disposition?

A. Well, he was always of a very cheery disposition.

Q. He was. [107]

FRED DOERR

was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

The Clerk: What is your name?

The Witness: Fred Doerr, D-o-e-r-r.

Direct Examination

By Mr. Chargin:

Q. Your name is Fred Doerr?

A. That's right.

Q. And where do you live at the present time?

A. 465 South 16th Street, San Jose.

Q. And how long have you been residing in this community? A. All my life.

Q. I see. And you have the last ten or fifteen years been on the City Council of this city?

A. For eighteen years. [108]

Q. For eighteen years. And did you know Mr. Adolph Koch during his lifetime?

A. I certainly did.

Q. And where did you live with respect to his home, a portion of that time?

A. Well, part of the time I lived at 266 South Second Street; part of the time at 499 South Fifth; another time in an apartment at 480 South Third, until I built my present home.

Q. And all those addresses are very close to the dwelling house of Mr. Koch?

A. All except the last one.

(Testimony of Fred Doerr.)

Q. I see. And how long did you know Mr. Koch?

A. Well, he attended my first birthday; in fact, when I was born he was invited to my home, my folks' home.

Q. He knew you all your life?

A. So he knew me from the time I was born, practically.

Q. Was he also a member of the same lodges, organizations you were? A. He was.

Q. And what was that?

A. San Jose Commandery.

Q. Knights Templars.

A. Knights Templars. [109]

Q. Did you ever visit in his home during the time you were living near him?

A. Oh, yes, quite frequently.

Q. How often would you visit him, say, during the year '38?

A. Well, maybe once a week; maybe not so often. I don't know, I never kept a record of the time.

Q. What did you observe as to his physical condition in 1938? A. Seemed to me to be O. K.

Q. Was he up and around?

A. Well, he was confined for a few weeks there.

Q. Yes.

A. I don't recall the nature of the confinement, but he was in his home there for several weeks during that time.

(Testimony of Fred Doerr.)

Q. During the latter part of the year was he up and around? A. '38?

Q. Yes, sir.

A. I believe he was. I think I saw him at a Knight Templar doings on December 25th, '38.

Q. That was Christmas Day?

A. Christmas Day; Christmas morning.

Q. Do you know whether he had charge of that [110] breakfast? A. He did; he did.

Q. And what was his duty in charge of that breakfast?

A. Well, he provided the refreshments; he ordered all of the supplies that were necessary and had entire charge, and called on the ladies of the Commandery members to wait on the tables. He was there first thing in the morning and had entire charge of the program.

Q. He was very interested in the affairs of that society, and particularly that Christmas function, is that right?

A. Yes. He had charge of the Christmas breakfast for quite some years—I don't remember how many years prior to that time.

Q. Did he ever discuss with you his personal business affairs, concerning his son or grandson?

A. Well, the only thing that he ever mentioned to me was the fact that he wanted to do something for Ralph, his grandson; he wanted to see that he had a decent education, and he was going to do

(Testimony of Fred Doerr.)

something handsome for him so that he could procure this education that he thought was necessary.

Q. Do you know when he happened to say that, what year it was?

A. Well, I think it was during '38, somewhere along [111] there; maybe early in '39. I am not sure as to date.

Q. Did the grandson ever come over to the house, ever see him over there, the grandson, Ralph?

A. Well, he lived with them for quite a number of years, up until he was about eighteen years of age, I believe, or pretty close to that.

Q. I see.

A. In fact, they raised him from the time he was a shaver; his mother died from childbirth.

Q. Did Mr. Koch ever tell you that he made some gifts or transfers to his son and to his grandson, that you recall?

A. No, I think not; although I do kind of have it in my mind that he mentioned something about having given George something the time he was in Gorman-Kaiser. I think he did. I'm not positive as to that, as to any amounts or anything of that sort. It never entered his mind, nor mine.

Q. Did you ever have any discussions with him concerning his future prospect of living, and what he thought about how long he was going to live?

A. Never did.

Q. Never said anything about that?

(Testimony of Fred Doerr.)

A. I guess he thought he would live forever, I don't know.

Q. Well, he was a pretty sturdy gentleman, wasn't he? [112] A. He certainly was.

Q. Do you know whether he drove his automobile during the year '38?

A. I knew he had one; I have never seen him in it. I don't know.

Q. You knew he had one?

A. I never had occasion to be in the neighborhood when he was— (Pause).

Q. Did he ever discuss with you the matter of transferring some stock, your stock, in the Masonic organization for the purpose of—

A. Well, he did mention it, he said I ought to turn it over because they wanted to make it as a tax-exempt corporation; it was a fraternal organization where they paid no dividends.

Q. In other words, he wanted the members to turn in their stock? A. Turn in the stock.

Q. So the Masonic Order could have a tax exemption on the franchise tax? A. Yes.

Q. And do you know how soon previous that he discussed that?

A. Oh, that was early '39; during '39 sometime.

Q. Early '39. Was he able to get up during '39, [113] did you see him around?

A. Well, he was always around his room and in the house.

(Testimony of Fred Doerr.)

Q. And did you ever see him outside?

A. I don't recall of being there at any time when he was outside. Because when I would call, I would just happen to go by and he would be sitting in the window. I would go in and say hello to him.

Q. Did you ever see him uptown during '39, that you recall? A. I wouldn't be sure of that.

MAMIE E. DOERR

was called as a witness for and on behalf of Petitioner and having been first duly sworn was examined and testified as follows:

The Clerk: And what is your name, please?

[114]

The Witness: Mamie E. Doerr.

Direct Examination

By Mr. Chargin:

Q. Your name is Mamie Doerr, and you are the wife of Mr. Doerr who just testified? A. I am.

Q. And how long did you know Mr. Koch during his lifetime, Adolph Koch?

A. Well, I couldn't say; several years.

Q. Several years. Did you ever visit over at his house? A. Yes, quite often.

Q. And during the year '37, '38, that you recall?

(Testimony of Mamie E. Doerr.)

A. Yes. I don't know about '37, but it was along during his sickness I was over there.

Q. And did you visit him in '39, after his illness, and when he recovered?

A. Yes, I was there.

Q. Was he up and around?

A. He was sitting in the front room, in the bay window.

Q. Did he ever discuss with you transfers and transactions, or the welfare of his grandson?

A. Yes; he did, quite a bit.

Q. What did he say about his grandson? [115]

A. Well, he said he wanted to see Ralph was provided for for an education. And he said that he had been left an orphan, that is, he felt he was an orphan. His father had married again and he wanted to see that he was taken care of.

Q. Did he say anything about whether or not he got along with his stepmother, was there any discussion about that?

A. No, no, he didn't say anything to me about that.

Q. Were you present that morning of the Christmas breakfast in 1938 when Mr. Koch was in charge of the affair? A. Yes, I was.

Q. Was he in charge of that affair?

A. Yes, he was.

Q. And do you know what arrangements he made for it?

(Testimony of Mamie E. Doerr.)

A. Well, he provided everything. And he wanted—always wanted me to take charge under him. So, I was pretty well acquainted with him that way. That is how I became acquainted with Mr. Koch.

Q. Do you know whether he went down to make preparations before the day of the ceremony?

A. No, I don't. I know he was very particular about his slices of ham; every one had to be just so.

Q. Do you know whether he made a little talk or was called on to speak or to say a few words that morning? [116]

A. I think he did. I am not positive about that.

[117]

DR. ARTHUR T. McGINTY

was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

The Clerk: Your full name?

The Witness: Arthur T. McGinty.

Mr. Chargin: I will take him as my witness.

Mr. Murray: All right.

Mr. Chargin: I will put him on.

The Judge: Called as a witness for the petitioner, and the record may so show. Very well.

(Testimony of Dr. Arthur T. McGinty.)

Direct Examination

By Mr. Chargin:

Q. Dr. McGinty, how long have you been practicing medicine and surgery in this community?

A. Since 1907.

Q. 1907. And where did you receive your education? A. University of California. [118]

Q. University of California. And did you know Mr. Koch during his lifetime?

A. Knew him very well for many years.

Q. And where did you reside with respect to his house? A. Next door to him.

Q. And for how many years did you reside next door to him?

A. From 1923 up to the time of his death.

Q. Did you visit him often or talk to him in the yard, or next door, as neighbors?

A. Very often. We visited, we were close friends.

Q. Very close friends?

A. Neighborly friends. My children and his children were very close friends and visited back and forth.

Q. What was the condition of his health in '37 and '38, so far as you know? A. Very good.

Q. Very good. Was he up and around?

A. Oh my yes.

Q. And did you ever see him drive his automobile in 1938?

(Testimony of Dr. Arthur T. McGinty.)

A. I believe I did, but I really couldn't answer that very positively. I know that for some little time before he died that he didn't drive it. [119]

Q. He didn't?

A. I think one reason probably was that he wanted Ralph to have it.

Q. Did you treat him— Were you called to treat him upon or about the 28th or 29th day of June, 1939?

A. Yes, I was called a little while before that.

Q. You were?

A. And then I saw him and doctored him after his automobile injury, when he got that bump.

Q. I see. A. On the right side.

Q. Well, to go back to the time just previous to his death, were you called at the time of his last illness? A. Yes.

Q. And where, who called you and where, do you know? A. Mrs. Compton called me.

Q. Mrs. Compton. And where did you go, to his home or to the hospital? A. To his home.

Q. And what did you find and what did you observe at that time?

A. Well, he was in a state of shock.

Q. And did you discuss with the domestic there, the housekeeper, what happened or what was the matter? [120] A. Why certainly.

Q. What did she say?

A. Something hit him suddenly and he fell.

(Testimony of Dr. Arthur T. McGinty.)

Q. He fell?

A. In the bathroom, I think it was, as I remember.

Q. And what was his chief complaint then?

A. He had a distress, a very severe lower abdominal distress, which gradually developed and increased, and he thought that he couldn't urinate.

Q. Yes. Did you diagnose at that time as a rupture of the left hypogastric artery?

A. No, I couldn't make any diagnosis at that time.

Q. But I mean, what was your diagnosis or what did you think he was suffering from just at the time that you were immediately called in?

A. I first thought he—his prostate had blocked up and that he had a distended bladder. And I attempted to empty it, and I couldn't get any urine at all. Then the next thought I had, the possibility of an abdominal—either an abdominal hemorrhage or a partial paralysis of the bowels. There are so many little things that can develop suddenly in a case like that, that it is sometimes impossible to make a diagnosis.

Q. Did you see Mr. Koch during the early part of 1939, around the house, or out in the yard, that you recall? [121] A. Oh yes.

Q. And how did he look then?

A. I saw him every day, nearly.

(Testimony of Dr. Arthur T. McGinty.)

Q. How did he look then and what was the condition of his health?

A. Looked wonderfully well. His limp that he had after Dr. Cottrell took care of him had cleared up almost entirely.

Q. Did he use a cane or how did he get around?

A. He didn't use a cane very much, as I remember.

Q. Didn't use a cane.

A. There was for a time when he would go out riding, he would have to have a cane and have someone help him in the car. I can remember, myself, that I have offered to help him down the stairs and help him get in the car; he absolutely refused to have any help. He was very independent.

Q. He was very independent about himself, is that right?

A. About any assistance of any kind. He always was.

Q. And did he ever say anything to you or remark to you, or make some statement to you concerning that hip of his, or that sore leg?

A. The right side? [122]

Q. Yes.

A. Oh yes. I doctored him at that time, and I drew out— He had a hemorrhage inside. Let's see, I forget now. I think it was—

Q. His left?

A. A little lower down, over the hip. I drew

(Testimony of Dr. Arthur T. McGinty.)

out—I wouldn't be surprised if it was the best part of a quart of fluid out of him two or three different times.

Q. That is when?

A. It was sometime after; it took it some time to develop and liquefy.

Q. And do you know what year that was in, approximately, Doctor?

A. Well, several years before his death.

Q. Would that hip leave him some permanent disability in the future, or did it?

A. Ordinarily it should not, but he always complained of having a rheumatism pain there.

Q. Rheumatism?

A. And he had an electric ring that he used to sit down and put around him, and said it soothed him and helped him.

Q. I show you, Doctor, a certified copy of—what purports to be a certified copy of the death certificate of Mr. Koch. Will you take a look at that. That is apparently [123] signed by you (showing). Do you recall preparing that, Doctor?

A. Yes, I do.

Q. And some of the information was obtained through whom, George Koch, George A. Koch?

A. Which information?

Q. Who was the informant on that?

A. What do you mean, on this side?

Q. Yes.

A. Well, the doctor never has anything to do

(Testimony of Dr. Arthur T. McGinty.)

with that, the preparation of that. Many times he doesn't even look at it.

Q. All right.

Mr. Chargin: We would like to have it introduced in evidence.

Mr. Murray: No objection. It is a certified copy.

The Judge: Very well, it may be handed to the clerk and marked Petitioner's Exhibit No. 2 and received in evidence.

(Whereupon the death certificate above referred to was received in evidence and marked Petitioner's Exhibit No. 2)

By Mr. Chargin:

Q. Now, Doctor, in this death certificate I notice [124] you state that the principal cause of death and related causes of importance in order of onset were as follows: Extra peritoneal hemorrhage due to rupture of left hypogastric artery. Now, Doctor, would you explain the meaning of that?

A. That artery is down under the Rectus muscle, and that was on the right side, and it goes right down in close to the bladder.

Q. I see.

A. And there is where the hemorrhage was, and that is the reason that it assimilated a bladder pressure.

Q. Could that rupture of that gastric artery have been occasioned by a fall, if he had fallen previous to that time? A. It could be.

(Testimony of Dr. Arthur T. McGinty.)

Q. Or would it be aggravated by a fall?

A. It could have been entirely; those things usually come as a result of a fall.

Q. I see. And now then, will you read the other causes of death in order of importance, and explain that?

The Witness (To the Judge): He couldn't get the word "interstitial."

By Mr. Chargin:

Q. I will let you read.

A. Chronic interstitial nephritis, with cystic [125] degeneration of right kidney.

Q. All right, what is the explanation of that statement, Doctor?

A. Well, he had some albumen in his urine which indicated a chronic—more or less of a chronic condition of the kidney.

Q. I see.

A. And some cystic degeneration in the left kidney. Small cysts which formed in the kidney. I must say that he never at any time showed any such condition or complaint, complained of anything, but it was there just the same.

Q. Previous to that time, as far as you know?

A. Yes. It may have been there and he may have been immunized to it for a long period.

Q. As a neighbor, Doctor, how did you consider his disposition, how was he with regard to his present and future affairs, in the concerns of life?

(Testimony of Dr. Arthur T. McGinty.)

A. Wonderful neighbor, always cheerful and happy.

Q. I see.

A. I never knew him otherwise.

Q. Did he ever discuss with you any thought of dying or anything of that kind?

A. Never have I ever heard or did I ever hear anything about death; he was always a very happy man, and had a happy outlook on life. [126]

Q. Yes. And you would consider him a rather strong man physically, is that correct?

A. Yes.

Q. To have lived that long?

A. He was always considered that by everyone.

Q. I see.

Mr. Chargin: No further questions.

Cross Examination

By Mr. Murray:

Q. Now, Doctor, can you recall which side Mr. Koch was injured on by the automobile accident?

A. On the right side.

Q. On his right side. And was that the side on which he sustained this hemorrhage or something, just before he died?

A. No—yes, it was the same side, yes.

Q. Now, did you have an opinion as to what the particular cause of that hemorrhage was at the time?

A. You mean the one that caused—probably had something to do with his death?

(Testimony of Dr. Arthur T. McGinty.)

Q. Yes. A. Yes, I believe it was the fall.

Q. You believe it was the fall?

A. He always complained of that right side after that injury, and there must have been some little muscle [127] weakness there.

Q. But—

A. And when he made a quick turn or what—of course I couldn't answer that—but I believe that the fall had something to do with it. There was no particular reason why it should rupture in that particular location.

Q. Well, at the time you attended him there just prior to his death did you make up your own mind at that time as to whether or not he had previously had a stroke?

A. I believe that he had a slight stroke originally, yes.

Q. And did you know of his indisposition at the time that Dr. Cottrell attended him?

A. Oh yes, I knew of it.

Mr. Chargin: Purely hearsay, Counsel, but I imagine it is all right.

Mr. Murray: Nothing hearsay about this; this is a professional man on the stand.

Mr. Chargin: I mean the fact as to what Dr. Cottrell may have—

The Witness: I never saw him professionally nor talked with Dr. Cottrell about him at all, only I knew that—I had talked with the nurse, and of course I saw him occasionally. I don't remember

(Testimony of Dr. Arthur T. McGinty.)

whether I went in to see him during the time that Dr. Cottrell was visiting him or not. [128]

By Mr. Murray:

Q. Well, did you observe, as a neighbor, did you observe the way he walked when you first saw him again after that?

A. Yes, I appreciated that he probably had a light stroke, because he cleared up so quickly that I was glad to see how rapidly he was improving.

Q. It was your opinion that he had a slight stroke? A. Yes.

Q. Now, there is one point, Doctor, I would like to clear up on the record. I understood you to say that the particular hemorrhage that caused Mr. Koch's death may have been occasioned by the fall. A. Yes.

Q. Now, which fall did you have in mind, Doctor?

A. The fall that occurred right that morning.

Q. In the bathroom? A. Yes.

Q. Doctor, in connection with your report after his death, after Mr. Koch's death, did you make some kind of an autopsy? A. I did.

Q. And—

A. I had to, to determine what the condition was.

Q. I see. And is that when you discovered the [129] condition of his kidney that you mentioned in the death certificate? A. Yes.

(Testimony of Dr. Arthur T. McGinty.)

Q. Will you state for the record just how extensive an autopsy you had to make in order to determine this?

A. Well, you had to open up the whole abdomen to determine a kidney condition, to get the kidneys.

Q. Well, the kidney condition that you found, did you decide it was something of long standing or something that suddenly happened?

A. The cystic condition undoubtedly was of long standing, an old condition. Those things will go on over years of time.

Mr. Murray: That is all, Doctor.

Mr. Chargin: Just a minute.

Redirect Examination

By Mr. Chargin:

Q. With reference, Doctor, to that cystic condition, it could be possible to have one without giving a person any discomfort or trouble or pain?

A. Yes. They develop—the thing gradually develops, and they develop an immunity to the infection, and they can go along over years with just such a condition.

Q. You did not know previous to his death that he had a cystic condition? [130]

A. Pardon me, a condition like that might have been responsible for a lot of the rheumatic pain that he complained of, where he used this electric ring, over the years.

Q. But you didn't know that he had this cystic condition previously?

(Testimony of Dr. Arthur T. McGinty.)

A. No. He was pretty much of a Christian Scientist when it came to thinking there was anything wrong with himself.

Q. His last illness, from the time that he complained of this severe pain, his death was less than twenty-four hours, is that correct? I mean, death ensued within twenty-four hours of his last illness?

A. Yes. I think I was called in the morning and he died that afternoon. The nurse called me at home early in the morning.

Q. Doctor, you had no particular examination of Mr. Koch that would indicate to you that he was suffering from a stroke; in other words, you didn't treat Mr. Koch in the first part of 1938, did you?

Mr. Murray: If Your Honor please, this is redirect examination, as I understand, and I object to leading questions.

Mr. Chargin: Well, no.

The Judge: Objection overruled.

By Mr. Chargin: [131]

Q. Never treated Mr. Koch during the spring of 1938? A. No.

Q. And therefore you never diagnosed the matter as being a stroke, his illness, in the spring?

A. Only by that, as I explained awhile ago, in my medical training and observation.

Q. I see. Well, you were advised that Mr. Koch received or had a stroke, is that right, primarily? A. What?

(Testimony of Dr. Arthur T. McGinty.)

Q. You were advised by someone that Mr. Koch was supposed to have had a stroke in the spring of 1938?

A. No, I saw him getting around, after he was up and about.

Q. I see. But you didn't prescribe for him?

A. No.

Q. Either during the month of March, April and May?

A. No, I didn't have anything to do with him. As I told you, I saw him improving rapidly every day, and I knew it wasn't going to amount to anything.

Mr. Chargin: All right. No further questions.

Mr. Murray: I have another question or two, if Your Honor please.

Recross Examination

By Mr. Murray:

Q. Dr. McGinty, did I understand you to say that [132] you attended Mr. Koch in connection with the automobile accident? A. Yes.

Q. And I understood you to say, I believe, further, that this time that you attended him was sometime after the accident, or did you attend him right at the time?

A. Well, I attended him right after the thing happened. But there wasn't anything to be done for him, without gambling on getting a great big isolated blood clot, and I just didn't do anything. We talked about it, and I examined him frequently. And when I saw the thing beginning to

(Testimony of Dr. Arthur T. McGinty.)

resolve, in other words, to liquefy, then I advised that we had better just put a syringe needle in there and draw the fluid out, which I did on a number of occasions.

Q. Can you recall at all how long later that treatment of drawing off the fluid was prior to his death? A. Before his death?

Q. Yes, approximately.

A. Well, I really don't remember when that accident was. I think it was several years before his death.

Q. Well—

A. And the drawing off of the fluid was just a matter of, oh, I think at most probably six to eight weeks after. [133]

Q. What kind of a scar, if any, did you find this injury to leave?

A. It wasn't a scar. I think the skin was abraded a little at the time, but he had a great big depression in the muscle. The muscle must have broken. He must have got hit so hard that it cut the muscle under the skin. Because there was a great big depression. You could put your fist down into it.

Q. Where was that depression on his body, Doctor, if you please?

A. As I remember, it was right over the gluteus muscle.

Q. In the right hip? A. Yes.

Mr. Murray: That is all. That is all.

Mr. Chargin: Are you finished?

No further questions.

Mr. Murray: Thank you very much, Doctor, for coming over.

Mr. Chargin: Will you take the stand? Whereupon

NELLIE V. RICHARDS

was called as a witness for and on behalf of the Petitioner and having been first duly sworn and examined and testified as follows: [134]

Direct Examination

By Mr. Chargin:

Q. Your name is Nellie V. Richards?

A. It is.

Q. And you have a place of business at 282 South Third Street? A. I do.

Q. And what is your business?

A. I am an optometrist.

Q. I see. Where are your offices with respect to the home of Mr. Koch?

A. It is directly across the street.

Q. I see. And had you known Mr. Koch previously to the time of his death? A. I did.

Q. And for how long a time?

A. Well, the first time I remember Mr. Koch was in May, 1933.

Q. May, 1933? A. Yes.

Q. And did you see him after that time very often?

A. Well, I saw him as he left and entered his

(Testimony of Nellie V. Richards.)

home, and saw him drive out in his automobile. I saw him often.

Q. I see. Did you see him during the year 1937 and [135] '38? A. Yes.

Q. Did you ever fit him with glasses?

A. I did.

Q. And in what year did you fit him with glasses?

A. I fitted him with glasses on April 5th, 1938.

Q. April 5th, 1938. And what was the condition of his eyesight at that time?

A. Well, he had astigmatism.

Q. Yes. A. Myopic astigmatism.

Q. Did you ever see him drive an automobile during the year 1938?

A. Oh yes, I am sure he did.

Q. Yes.

A. I am sure I saw him, because he was—I made his glasses in that time, and he was all right, then he was driving his car.

Q. Yes. Did you ever talk to him off and on as a neighbor there, see him across the street and talk to him?

A. Oh yes, I am sure I saw him at least twice a week.

Q. Twice a week. Where would you see him, out in front of his house, or something of that kind?

A. Well, I would see him—he would come to the [136] office. And I talked to him in his garden and in his house, and in his home.

(Testimony of Nellie V. Richards.)

Q. What was his disposition when you spoke to him, as far as you could determine?

A. Well, he was always of very happy disposition.

Q. Was he able to get around, physically, in 1938 and '39? A. Yes.

Q. Did he have a cane or not?

A. Well, he may have—it seems to me I saw him with a cane a time or two.

Q. I see. Did you ever see him pose for some photographs during the year '39? A. Yes.

Q. Where was that at?

A. It was in his own yard, his front yard.

Q. His front yard. Are you able to fix the time, what month, do you know?

A. Well, I would say it was five or six weeks before he passed on.

Q. Five or six weeks before he passed on. And who took his picture, do you know?

A. Well, I know it was a neighbor, a young lady across the street. I don't remember her name.

Q. Yes. And at that time was Mr. Koch able to [137] walk around and get around?

A. Well, yes, he was able to move about.

Q. Did he ever discuss your business affairs with you?

A. Well, he sat in his front window and would watch for me to come down to the office, and as I stepped out of my car I would see him and wave at him. And he would chide me for being late. If I wasn't right on time, he noticed it. And I would

(Testimony of Nellie V. Richards.)

go across the street, and perhaps I would explain, I would say "Now, Mr. Koch, I had to stop on the way down, I didn't have any appointments but I needed to attend to some errands."

Q. And what would he say to you?

A. He would say "Well, you must tend to business."

Mr. Chargin: No further questions.

Mr. Murray: No questions.

Mr. Chargin: Mr. Rudolph?

Whereupon

PAUL RUDOLPH

was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

The Clerk: And what is your name, please?

The Witness: Paul Rudolph. [138]

Direct Examination

By Mr. Chargin:

Q. Your name is Paul Rudolph? A. It is.

Q. And what is your profession or occupation, Mr. Rudolph? A. Banker.

Q. And with whom are you associated?

A. First National Bank.

Q. And what is your position with the First National Bank?

A. Vice President and Cashier.

(Testimony of Paul Rudolph.)

Q. And how long have you been connected with that bank? A. Thirty-eight years.

Q. Was Mr. Koch a depositor of your bank?

A. He was.

Q. And for how many years was he a depositor, do you know?

A. He was a depositor all the years that I have been there.

Q. I see. Mr. Koch had substantial sums of money in your institution? A. He did.

Q. How long had you known Mr. Koch, personally, [139] could you say?

A. Thirty or more years.

Q. Thirty or more years. Would you see him in your bank during the years '37, '38 and '39?

A. I did.

Q. How often would you see him there in '38?

A. Oh, I would say maybe once a month.

Q. I see. A. That is to my own knowledge.

Q. Did he ever discuss business with you, business affairs? A. He did.

Q. Did he ever discuss the affairs of the San Jose Building & Loan Association with you?

A. He did.

Q. Did you ever see him in '39, in the year of '39, the year of his death?

A. In the early part of it.

Q. In the early part of it. Would you state on how many occasions do you know?

A. Oh, two or three times, I would say.

Q. And where would you see him, in your bank?

(Testimony of Paul Rudolph.)

A. In the bank.

Q. Was anyone with him when he would come or would he be by himself? [140]

A. Sometimes George was with him and sometimes he would come over and talk with me, personally.

Q. I see. Was he able to get around at that time? A. Yes.

Q. What was his disposition with regard to being either cheerful or otherwise?

A. He was always cheerful.

Q. He was. Would you consider him in 1939 capable of conducting business affairs?

A. I would.

Mr. Chargin: No further questions.

Mr. Murray: No questions.

Mr. Chargin: Mr. Snyder.

Whereupon

CHARLES L. SNYDER

was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

The Clerk: What is your name?

The Witness: Charles L. Snyder, S-n-y-d-e-r.

Direct Examination

By Mr. Chargin:

Q. What is your name, please?

A. Charles L. Snyder.

(Testimony of Charles L. Snyder.)

Q. And what is your occupation, Mr. Snyder?

[141]

A. Merchant.

Q. Beg pardon? A. Merchant.

Q. And how long did you know Mr. Koch previous to his death? A. Thirty years.

Q. Thirty years. Was he a member of an organization of which you were a member?

A. He was.

Q. And what was that?

A. Knight Templar.

Q. And did he take an active interest in that organization? A. Very definitely.

Q. Did you ever go to visit Mr. Koch at his home? A. Very often.

Q. Very often. He was a personal friend of yours? A. He was.

Q. Did he ever discuss any gifts that he had made to fraternal organizations with you, or anyone in particular? A. He did.

Q. Which ones—what was the conversation and what did he say to you?

A. He told me that he had given \$100.00 to the ladies' organization connected with the Knights Templars [142] for the purpose for which they were organized, and for a Christmas gift. I think that was in 1938.

Q. '38.

A. And that he anticipated making a similar gift each year following.

Q. I see. Did he ever discuss with you any of

(Testimony of Charles L. Snyder.)

his problems with his son, or his grandson, as far as you remember?

A. Indirectly.

Q. Indirectly.

Mr. Chargin: No further questions.

Mr. Murray: No questions.

Mr. Chargin: Mr. Drew.

Whereupon

JOHN H. DREW

was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

The Clerk: Your name, please?

A. John H. Drew, D-r-e-w.

Direct Examination

By Mr. Chargin:

Q. What is your occupation, Mr. Drew?

A. Secretary, San Jose Building & Loan.

Q. Secretary. And how long have you been the [143] secretary of that Building & Loan Association?

A. For over ten years.

Q. And how long have you known Mr. Koch?

A. Since 1924.

Q. What was his position during the early twenties with the association, or thirties?

A. Well, he was president at one time, and at other times—at another time he was vice-president.

(Testimony of John H. Drew.)

Q. Yes. And was he a director of that association during the year '37 or '38? A. He was.

Q. And particularly in '38 did he hold any official position with the Board, or just a director?

A. He was the Vice President.

Q. He was Vice President?

A. I believe, yes.

Q. Yes. And did he attend the meeting of the Board in '37, regularly? A. Yes.

Q. And did he attend meetings of the Board regularly in '38?

A. Yes. He was absent, I believe, two meetings in 1938.

Q. He was only absent two meetings in '38. And how often would you meet? [144]

A. Once a month.

Q. Once a month.

A. That is the regular Board, and then we had committee meetings, otherwise.

Q. I see. When he attended these Board meetings did he take an interest in the association's affairs? A. He did.

Q. And with regard to the loan that Mr. Faber Johnston spoke of, the discussion of a repayment of a loan, was he present at that time when this took place? A. He was.

Q. And will you testify as to what happened there?

A. Well, he really led the discussion and made the motion to accept the payoff of this large loan, without a prepayment charge.

(Testimony of John H. Drew.)

Q. Yes. That was when, do you know? December?

A. December; I believe it was on the meeting of December 21, 1938.

Q. In December of 1938 you feel he was competent to take care of his business affairs?

A. Yes.

Q. And discuss important matters?

A. Yes.

Q. Now, I will show you this: Is that your signature there? [145] A. Yes.

Q. Certifying to that document?

A. Yes, it is.

Mr. Chargin: We would like to introduce in evidence a purported certified copy of a resolution of the Board of Directors of that association.

Mr. Murray: Objected to on the basis it is irrelevant and immaterial, if Your Honor please.

The Judge: It may be handed to the clerk and marked Petitioner's Exhibit 3 for identification.

(Whereupon the resolution above referred to was marked Petitioner's Exhibit No. 3 for identification.)

The Judge: I haven't seen it. What does it purport to be?

Mr. Chargin: It purports to be a resolution of the Board of Directors of the Association adopted on the 21 of December, '38, wherein the motion was made by Mr. Koch authorizing the elimination of a prepayment penalty with regard to the Building & Loan on this loan payment.

(Testimony of John H. Drew.)

The Judge: Objection will be overruled. It will be received as Petitioner's Exhibit No. 3.

(Whereupon the resolution heretofore marked Petitioner's Exhibit No. 3 for Identification, was received in evidence and marked Petitioner's Exhibit No. 3.)

By Mr. Chargin: [146]

Q. You said that that was your signature down there? A. Yes, that is my signature.

Mr. Chargin: I want to read this in the record.

The Judge: You need not; it has been received.

Mr. Chargin: Very good.

By Mr. Chargin:

Q. I call your attention to that document. The meeting of the Board of Directors you refer to took place on what date?

A. December 21st, 1938.

Q. December 21st, 1938. All right. What kind of a man was Mr. Koch with regard to business affairs, in handling the association, even during the year 1938, '37?

A. Well, Mr. Koch was always the one to watch the expenses and always checked pretty carefully on that angle of the business.

Q. When he would come—— What was his condition of health, so far as you were able to observe, during the year '38?

A. He was able to get around.

Q. Could get around?

A. He came in the office frequently.

(Testimony of John H. Drew.)

Q. Do you know who he would come to the office with, whether he would be driven there, or walk there, or how?

A. I don't know exactly. I believe that our Mr. [147] Cowell called for him a time or two. I don't know whether that was in '38. He would call for him. Whether it was in '38 or early '39, I am unable to say.

Q. Did you ever see him walking around town, or around the business section during the year 1938?

A. Oh yes.

Q. I see. Was he able to get around unassisted by anybody? A. Yes.

Q. I see. Was it his custom to visit with the employees of the association whenever he dropped in there?

A. Yes, he usually talked with the different ones.

Q. He was on good terms with most of the employees, then, particularly the officials, that is correct? A. Yes, friendly terms.

Q. What was his disposition?

A. It was always cheerful, and inclined to kid, in his way.

Q. All right. [148]

MRS. ANGELINE COMPTON

was called as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

The Clerk: And your name?

(Testimony of Mrs. Angeline Compton.)

The Witness: Mrs. Angeline Compton.

Direct Examination

By Mr. Chargin:

Q. Your name is Angeline Compton?

A. Yes, sir.

Q. And where do you reside now, Mrs. Compton?

A. 267 South Third.

Q. 267 South Third. And about how far is that from the former residence of Mr. Koch?

A. Just the second door.

Q. The second door from him?

A. Dr. McGinty is between.

Q. Yes. [152] A. 285, and 267.

Q. I see. And what is your occupation?

A. I have been practical nurse for about fifteen years.

Q. I see. And were you employed by Mr. Koch at any time?

A. Yes. He employed me in April, '36 as his housekeeper.

Q. April, '36. And up to what time did you work there? A. From April, '36 to April, '37.

Q. And where did you go after '37, after you left his employ?

A. He was going to make a trip to Denver, and I made a trip back to Nashville, Tennessee to my old home.

Q. Do you know whether he went to Denver that year? A. Yes, I know he went.

Q. He went to Denver in 1937?

(Testimony of Mrs. Angeline Compton.)

A. I had a letter from him after he got there.

Q. I see. And when did you return back from Tennessee?

A. I returned back that same summer, three or four months afterwards.

Q. I see. Did Mr. Koch own a car?

A. Yes. [153]

Q. A personal car? A. Yes.

Q. When did he buy a new car, do you know?

A. Well, I don't remember when he bought the new car; it must have been '38.

Q. Why do you say it must have been '38?

A. Well, because I was living over on 6th Street.

Q. Yes.

A. And I went down to Hale's store and I came by. I was living there in '38.

Q. Yes.

A. And I came by, and he was out in the yard. And he says "How do you like my new car?" I said "So you have got a new car?" And he said "Yes." He says, "Get in, and I'll take you home." So I got in and he drove me up San Carlos up to 7th and came down and put me out at 6th.

Q. I see. Did you see him drive at any time during the years?

A. Oh, numbers of times he took me over to his barber, after I was back employed with him the second time.

Q. When were you again employed by him?

A. The next in '38.

Q. In '38? A. Yes.

(Testimony of Mrs. Angeline Compton.)

Q. And what time of year was that now? [154]

A. About May, I think.

Q. About May? A. Yes.

Q. Now, do you recall the time that you came into his house and found Mr. Koch—

A. Well, that was in May.

Q. May of '38?

A. I had been to Hale's store, and I came by, and as I often did, stopped in, when I didn't see him on the porch I went in.

Q. Yes. A. And he was lying on the bed.

Q. Were his feet on the bed?

A. No, he had his shoes on.

Q. He had his shoes on? A. Yes.

Q. How was he dressed?

A. Had his trousers on and his house coat.

Q. Yes.

A. And I said, "What's the matter, are you sick?" He said, "No, I was in the bathroom shaving and I fell and hurt my hip."

Q. Was there anything else that you observed wrong with him at that time?

A. Well, I noticed that his two fingers here had a [155] little blood on them. And I supposed he struck them against the bathtub, because there was blood on the bathtub. And these two fingers swelled up and they kind of scabbed over and got well then. But they were a little bit stiff, swollen a little, and just a little stiff.

Q. Now, at that time did you call a doctor?

A. Yes, sir.

(Testimony of Mrs. Angeline Compton.)

Q. At whose request?

A. Well, I didn't know who to call, and Mrs. Fred Doerr—

Q. Yes.

A. (Continuing) —told me, she said "Dr. Cottrell is a good doctor," and so I called him.

Q. Did Mr. Koch ask you to call a doctor?

A. No, he didn't. I didn't let him know I called him.

Q. He made no request for a doctor at that time?

A. Never did.

Q. So you called Dr. Cottrell then?

A. Of my own accord.

Q. Yes. And how often did Dr. Cottrell come to visit him?

A. Well, I called his son, Mr. George Koch.

Q. Yes.

A. And he and Mrs. Koch came over, and Dr. Cottrell [156] came every day, then.

Q. Yes.

A. He said—when he came, he didn't examine any place in his body, except he took his temperature and his blood pressure.

Q. Yes.

A. And he said "Well, stay in bed a few days and you will be all right."

Q. Yes.

A. Well, Mr. Koch didn't want to stay in the bed. And he stayed in the bed, though, for a day or two, and then he would get up. And I would take him

(Testimony of Mrs. Angeline Compton.)
to the bathroom. But this left leg was always giving him trouble.

Q. What was the condition of that left hip or left leg; I mean, did you ever see it?

A. Yes. Right on the joint of the left hip, right on the joint, where it works together—

Q. Yes.

A. (Continuing) —was all knocked in, had sunken in; the whole cap of that left hip was knocked in. And he said it was when Mr. Sheppard hit him with an automobile.

Q. Yes.

A. And in '36 when I was with him he would use this rubber ring. And Mr. Swickard would come in and say "A. J., how's the barometer?" He said, "Well, it is going to rain," [157] and he would laugh at him. He called this hip his barometer; he could always tell when it was going to rain. But we laughed about it, but the next morning it would be raining.

Q. So during the time that Dr. Cottrell was treating him he was not bedridden all the time?

A. Well, he wasn't only when the doctor came.

Q. And he got up and around? A. Yes.

Q. And sat in his chair?

A. Yes, and sat up and walked to the bathroom several times. But I tried to keep him in the best I could, because the doctor said to.

Q. Did Mr. Koch ever make any remark about the doctor staying there too long or coming too often to see him?

(Testimony of Mrs. Angeline Compton.)

A. Well, he kept a-coming, and I suggested—and I went out on the porch with Dr. Cottrell, and I suggested to the doctor "Do you think it is necessary for you to come every day?" He said, "Did he say anything about it?" I said, "No, but," I said—He wasn't giving him any medicine, never gave him anything. And Mr. Koch would laugh, he would say, "Well, the doctor just tickles me on the toe." The doctor would come and tickle his toe, and he would jerk his foot that way, you know, when he would tickle his toe—Mr. Koch would jerk his foot. He would say, "Well, you're coming, you're coming." I said to the doctor, "Do you think [158] it is necessary to make a trip every day?" "Did he say anything about it?" I said, "No, but I just thought it wasn't necessary." "Well," he said, "George told me to keep a watch on him." So Mr. Koch and I talked about it. I told him what I said to him. He said, "Wait until George comes and he can pay him off, and then he will stop." He quit then.

Q. During the year 1939 was Mr. Koch able to get around?

A. Sure. He had his hair cut every month, and he did his own shaving at home; he had his electric razor, and once a month he would go to the barber and have his hair cut. And when he lived at the first house on San Carlos, well, he walked over to San Antonio, right at KQW was a barbershop.

Q. How far was that from the home?

A. That was just a block. And three weeks, to

(Testimony of Mrs. Angeline Compton.)

the very day, every time it come his day to have a haircut, he went. And this time, it was just three weeks, just the last—it was in June, the last month he lived, I went with him down to this barbershop by the side of KQW. There was a customer in the chair. I said, "Well, I am going back home and I will come back for you." And he walked with his cane. So I went back home and I asked the barber how long it would be before I must come after him; he said, "Oh, half hour." So I went back and came back and he was gone. I said, "Well, [159] where has he gone to?" He said, "He went this way." Pointed towards Second Street. Well, I went on down Second, and when I got there by the Baptist Church I looked up the street and he was just going in Mr. Thompson's, Percy Thompson's office.

Q. He is a real estate man?

A. He was just going in there. And Mr. Thompson came down to see him quite often. So I went on up, didn't let him know that I was there. He was standing—he didn't sit down, he was standing, talking to Mr. Thompson. So I went across the street to see where he would go. He came out and he went down and cross San Antonio by the Y there, went on down—Mr. Louie Doerr was living there on that street then. And he stood there and talked to Mr. Louie, and went on past the undertaker shop there where Zinke's is now. And I went over and talked to Mr. Doerr. And he said, "He is a curiosity, isn't he?" I said, "I am going across

(Testimony of Mrs. Angeline Compton.)

the parking lot and beat him home." So, he went on down to San Carlos and came around. And when I got to the home I went—I saw him up by—just across by the filling station, and I went up to meet him. And he laughed, he said, "How did you know where I was?" I said, "I was keeping tab on you." So he came on in home.

Q. And that was, you say, three weeks before his death?

A. That was in June, before he died the 29th of June.

Q. Who prepared his meals for him? [160]

A. I did.

Q. You did? A. Yes, sir.

Q. And how was his appetite?

A. Couldn't have been better.

Q. What do you mean by that, what would he eat?

A. He ate anything that he could get ahold of.

Q. Did he have any particular pet appetites or desires that he wished filled?

A. No. The doctor said to feed him lightly, I did at first, but otherwise he ate anything he wanted.

Q. Previous to his illness in May, when he fell down there, was his appetite good in 1937?

A. The last night—the last day he lived he ate a good breakfast and a lunch—we always called it dinner—and supper.

Q. Yes.

(Testimony of Mrs. Angeline Compton.)

A. And I didn't see any change on him at all the 28th of June until after I put him to bed that night. And in about an hour—he always went to bed at eight o'clock, he got up about five—and I put him to bed, and in about an hour after I put him to bed he called to me. And he said, "I have a hurting down here." And he couldn't urinate.

Q. Yes.

A. So I called Dr. McGinty. And Dr. McGinty tried [161] to catheterize him, and he couldn't. But that morning, the morning of the 28th, he was in the bathroom and shaved, and the last thing he would always do would be to shave and wash his hands and face and comb his hair before he went into the room. So, he was standing right in front of the mirror where he combed his hair, and he cleared his throat, and I turned to get some paper for him to expectorate on, and he fell, standing straight up, right where he went to turn. Every time he would turn around this hip seemed like it would get out of place. And he fell and I caught him, but his weight pulled me down; we both fell on the floor. Then I got him up and put him on the bed. And he stayed there awhile, and then he came in to the front and sat in his chair the rest of the day, and he ate his dinner. And that evening then, why,—he always ate an early supper.

Q. Now, going back to 1938, on Christmastime when they had that breakfast over—

(Testimony of Mrs. Angeline Compton.)

A. The Knights Templars.

Q. Over at the Knights Templars organization, do you recall going down there with him?

A. Yes, sir, I went with him.

Q. And was he in charge of that breakfast?

A. He went down and bought everything beforehand, and I took him down, went down with him the night before.

Q. Yes. [162]

A. He wanted to see that the tables were all fixed and everything, the decorations were all right.

Q. How did you go down the night before?

A. He and I walked down.

Q. Walked down?

A. Yes, sir. He and I walked down.

Q. Did he have the chair there that night?

A. No, he didn't have the chair; the chair was out in the garage. We kept it out there. He didn't want to ride in it.

Q. Would you explain the circumstances of that chair, who gave it to him?

A. It belonged to the Knights Templars Mr. Doerr said, and Mr. Fred Doerr brought it over there, thinking that it would be a help to him.

Q. Yes. Did Mr. Koch want to use the chair?

A. He didn't like to ride in it, and I didn't like to push it.

Q. And so he preferred to walk?

A. Yes, sir, he preferred to walk.

Q. But that Christmas morning he did use the chair?

(Testimony of Mrs. Angeline Compton.)

A. Christmas morning I took him down and he had his—he ate a hearty breakfast, a big breakfast, and he made a little speech.

Q. He did? [163]

A. Yes, sir, he made a little talk.

Q. Did he ever have any discussion with you about people interested in him for his money?

A. Yes. I came home one day from the grocery store, and there was a lady—— He was out in the lawn, watering the lawn.

Q. Do you know what year that was, about what year?

A. Oh, that was within a month or two before; that was in '29.

Q. Thirty-nine.

A. Thirty-nine, I mean, yes. This lady was out there. I didn't know her. And when he came in the house, he laughed, he says, "These women are sights," he says, "this woman wanted me to take her for a ride, wanted to know why I didn't ever come to take her for a ride."

There was a lady rooming in the next door there in Dr. McGinty's, rooming and boarding there, and every time he would go out in the back yard he would run into her, so he turned around and came back one morning. I saw him twice do that. He says, "I don't know what these women mean." He says, "She is wanting to get in with me." So I was out, he was to town, and I was out in the back yard and hanging out some clothes, and she came

(Testimony of Mrs. Angeline Compton.)

over to me and she says, "Why don't you set your cap for that old man?" I says, "Well, I don't know, I don't want to marry, that is all I know." [164] And she says, "Well, if you don't want him, put me on," she says, "you will get plenty of money." And there were several women came and talked to him, and he would laugh about them.

Q. And he was aware of that, was he?

A. Oh yes, he knew it. One woman got mad at me, one old maid. She clerks at Hale's now. She got mad at me, won't speak to me to this day because I wouldn't let him answer a card. I didn't even know her, and she wrote him, and he wouldn't answer it, and she thought I was to blame for it.

Q. Did he have a photograph taken in 1939 of himself? Someone take a picture of him?

A. Yes. He had one taken in the front. He had one taken with Dr. Richards.

Q. Do you have that photograph with you?

A. Then we had some taken on Sunday, two weeks before he died.

Q. Have you got any photographs taken of him?

A. I wanted to have these made because I wanted his grandson—a picture of him made with his two grandsons so I could show them to my Tennessee folks.

Mr. Chargin: Do you care to look at these, counsel?

The Witness: That was in the back yard, on Sunday, and he only lived one Sunday after that.

(Testimony of Mrs. Angeline Compton.)

By Mr. Chargin:

Q. I will ask you when was that taken about, do you know?

A. Well, this one was made—the girl across the street came over and made this, and made one of Nellie. Nellie came in just then and she run over and had herself made with him. This was about three months, about three months before he passed away; not over that.

Q. And when were these taken?

A. They were taken the Sunday the week before he passed away.

Mr. Chargin: All right, we would like to have these introduced in evidence.

The Judge: Any objection?

Mr. Murray: No objection.

The Judge: They may be handed to the clerk and marked Petitioner's Exhibits Nos. 4, 5 and 6, and will be received in evidence.

(Whereupon Petitioner's Exhibits 4, 5 and 6 were marked by the clerk and received in evidence.)

By Mr. Chargin:

Q. Did Mr. Koch show some interest in his neighbors during the last year of his life?

A. Do what?

Q. Show interest in his neighbors and their affairs. [166]

A. Oh yes, he was very much interested in them.

Q. Would he talk, in the neighborhood, to people?

(Testimony of Mrs. Angeline Compton.)

A. He talked to everyone. He had a world of friends that came to see him, and he talked with them.

Q. Who particularly would he talk with then and visit, if you know?

A. Well, he often went over and talked to Mrs. Richards, and he also went over to the filling station and talked with the men there.

Q. Now, did he ever discuss with you during the year '38 his affairs concerning either George or his grandson Ralph?

A. Yes, he talked about them and told me everything, I guess, from start to finish.

Q. What did he talk about with regard to Ralph, the grandson?

A. Well, he had a great feeling for Ralph, because he was left a baby, his mother died when—he said—when he was four or five days old. And he said that Ralph was kind of kicked out. His stepmother had a son of her own, and she had an electric washing machine and a Japanese girl there, but she wouldn't let Ralph have his handkerchiefs and clothes washed there, so he had to bring them over to his grandpa's, and I helped wash them.

Q. Ralph brought his clothes over? [167]

A. Ralph would bring them over to his grandpa's and washed them on a rub board. I went to help him. I felt sorry for him, myself. And I did all the ironing, and I did the mending of anything. And that is what hure Mr. Koch. It just broke his heart. And so Mrs. Swickard, his stepmother,

(Testimony of Mrs. Angeline Compton.)

came over one day and was talking to him about she didn't want Ralph to go to Stanford. And Mr. Koch said "Well, Ralph is going to Stanford." Ralph wanted to go to Stanford, too. So I went with her out on the porch. And she rehearsed a whole lot to me about it. I came back and I said, "I can't understand why Mrs. Swickard doesn't want Ralph to go to Stanford." I said, "She is jealous because her boy couldn't go." She said they weren't able to send him. Her first husband and her had separated, said she wasn't able to send him. He says, "I am going to give Ralph a good education and put him in business." He said, "He has got no home, he has got no mother."

Q. When did he say that, do you recall what time that was?

A. Well, Ralph finished high school.

Q. What year would that be, in '38?

A. That is the spring—summer of '38.

Q. Summer of '38.

A. And he was going to enter college then that fall.

Q. I see. [168]

A. So then is when he wanted—and he says "You admonish Ralph," he says, "I want him to make a businessman." He says, "I don't want him to make a fiddler," he says, "I want him to make a businessman. And, you admonish him never to smoke cigarettes." He said there was four generations of the Kochs and none of them ever smoked.

(Testimony of Mrs. Angeline Compton.)

Q. Was the deceased, Mr. Koch, generous with his relations?

A. Well, yes, he had a feeling for every one of them. He said it hurt him worse to leave his baby brother, than all the rest of them. He left home when he was only sixteen years old, so he told me. And he said he came to this country, and he said it hurt him worse to leave Carl than it did any of the rest of them, or all of the rest of them.

Q. Do you know of any other gift he made to other members of his family?

A. Well, he had—

Q. In conversations with you?

A. Well, he had a niece in San Francisco.

Q. Yes.

A. That wasn't married. And she was sick, and he said he was going to give her—going to help her. "Now," he says, "the other nieces may feel sore towards me because I don't give them any, but," he says, "they have got a husband to work for them, and I am not going to help them." [169] That is what he told me, that he was going to give this niece that was not well in San Francisco, and had no home.

Q. Did he ever discuss the matter of giving money to his son George, or in your presence, or to you?

A. Well, he said this: He said, "When Hilda was in school, and George," he said, "I gave Hilda \$2.00 every Sunday." He said, "She needed a little spending money and she helped her mother and she

(Testimony of Mrs. Angeline Compton.)

had no way of making it, and," he said, "I made George work for what he got." He said, "George kind of thought I was sore at him, but," he said. "when George got older," he said, "Pa, you done right," he said, "you should have given it to Hilda." He says, "I have only got the two, and I am giving Ralph this money to put him through Stanford, and," he says, "I am going to give George the same amount." I don't know how much the amount was, but he said he was going to give him the same amount.

Q. Did he ever discuss in 1938 or '39 about going to see his brother Carl again?

A. Yes, he was going to have a new plate, going to have his upper teeth pulled. He had one tooth here, and then on one side they were all out. And he asked me who would be a good dentist. I told him that Dr. Hart was the best I ever had.

Q. Yes.

A. And he said, "Well, I am going to have my lower [170] ones"—he says, "they do all right, but I am going to have my upper teeth taken and a plate made." And he said he had a letter from his sister-in-law and she told him about Carl failing. It worried him. He said, "I was out there a year ago and straightened Carl's business up, and," he said, "I told him if he didn't get rid of this partner he would ruin him." And he said, "Now, he is ruined." He said, "I squared his bills all up and put him on his feet again, in '37."

(Testimony of Mrs. Angeline Compton.)

Q. Yes.

A. So he got this letter from his sister-in-law and he sat down and wrote her and asked her how much behind he was and what it would take to straighten it up. So he worried quite a bit about it. He said, "Carl is my baby brother." And he loved Carl and he thought the world and all of him. And he says, "I am going to help him out." And he asked me to make the check out for him. And he says, "You can write better than I can." So I made the check out. I made it wrong. I went on in to prepare his lunch and he called to me. He says, "Mrs. Compton," he says, "there is something wrong, something not right about this." I guess he didn't want to hurt my feelings, to tell me I had made a mistake. So I looked at it, I said, "Well, I guess I misunderstood you." I says, "I'll make it over." "No," he says, I'll fix it." So he fixed it, himself.

Q. Well, do you know whether he was going to see [171] George in Denver again? A. Carl?

Q. I mean Carl.

A. In Denver. Yes, he told me that when he got his teeth, got his new teeth he would go out there, and I might go as far as he did, as far as Denver, and then I could go on to Tennessee and visit my people, then he said I could come back and come back with him.

Q. Do you know what year that was that he had contemplated the trip to Denver?

(Testimony of Mrs. Angeline Compton.)

A. That was about three months before he passed away.

Q. Did he ever discuss with you or say anything about death, in your presence?

A. No, never heard him mention dying.

Q. Never heard him mention dying?

A. Not a time. And I was with him day and night and he never mentioned it.

Q. What was his disposition with regard to his outlook on life?

A. Oh, he was jolly and told lots of jokes, and I told him a lot of jokes and we got lots of good laughs out of it. And he enjoyed Nellie coming over, because they joked a lot.

Q. At the time of his death then—— How long was he ill, then, at the time of his death? [172]

A. He died on the 29th, June 29th, about two or three o'clock.

Q. Yes. A. In the afternoon.

Q. Yes.

A. And the 28th, in the morning about nine when he——

Q. Fell?

A. (Continuing): ——was fixing himself in the bathroom, he fell. As I said, I put him on the bed. He stayed there an hour or two, then he came on in and sat on his chair, then he came out to the dining room and ate his lunch. And that night he ate his supper and went to bed, and in an hour's time after he was in bed, why, he had this trouble, he

(Testimony of Mrs. Angeline Compton.)

couldn't urinate. And he died the next day. He never missed a meal. At three o'clock that morning I gave him a cup of coffee and a bowl of oats.

Q. Did he ever say how long he was going to live?

A. No. He said he was going to live to be a hundred. I would say "Yes, I am going to live to be a hundred, if I don't die."

Mr. Chargin: No further questions.

The Witness: His appetite was wonderful.

The Judge: Wait a minute.

Mr. Chargin: Excuse me.

The Judge: Any cross-examination? [173]

Mr. Murray: Not that I have noticed yet, there is no cross-examination. I mean, I didn't know you were through.

Mr. Chargin: Yes.

Mr. Murray: I beg your pardon, I didn't hear you.

No, no cross-examination.

Mr. Chargin: You were going to say something about his appetite.

A. In February, after this Christmas breakfast—

Mr. Chargin: You don't object?

Mr. Murray: No.

A. (Continuing): I don't know whether it was at the Knights Templars, but I think it was the Ladies Auxiliary, or something, whatever it is, I don't know about it, they invited him down to the dinner. And they had spareribs and saurkraut, and

(Testimony of Mrs. Angeline Compton.)

he ate three helpings of saurkraut. And I thought "Well, if you don't die from overeating, I don't know." He had a wonderful appetite. [174]

FABER L. JOHNSTON

was recalled as a witness for and on behalf of the Petitioner and having been first duly sworn was examined and testified as follows:

Further Direct Examination

By Mr. Chargin:

Q. Mr. Johnston, you testified, I believe, this morning, that Mr. Koch was a director of the Building & Loan Association. During 1938, did he have another capacity over there at the association?

A. Well, Mr. Koch was a director and he was the vice-president of the association; he also was on the Securities Committee which had to do with passing upon loans and appraising property when loans were made. And in that connection he used to go out with the committee, which required three members of the committee, to look at a piece of property and inspect the property, then they would discuss it in the office, the appraisal, putting it in writing, which he signed, or the members signed. It took three to make a loan. He worked on that committee.

Q. And in 1938 then he went out and appraised property, looked at property?

(Testimony of Faber L. Johnston.)

A. He inspected properties all the time with the committee. They used to go out, three members would go out and [175] look at a piece of property.

GEORGE ADOLPH KOCH

was recalled as a witness for and on behalf of the Petitioner and, having been first duly sworn, was examined and testified as follows: [176]

Q. Was your father during 1938 able to sign his own checks, and during 1939? A. Oh, sure.

Q. He was. I will show you four checks here, Mr. Koch, and ask you if those checks there were signed by your father, if that is his handwriting?

A. They are.

Q. Now, with reference to the first check, is the entire instrument signed and executed by him?

A. That is his writing, yes.

Q. I see. And what is the date of that?

A. It is November 6, 1938.

Q. November 6, 1938. And who was the payee of that check? A. Carl Koch.

Q. Carl Koch. And the amount thereof, \$1500.00, is that the handwriting of your father?

A. That's right.

Q. Do you recall the circumstances about this check? A. I do.

Q. Would you explain it to the court, as to what

(Testimony of George Adolph Koch.)

took place just about this time, or just previous to it?

Mr. Murray: What check is it? How would the [178] record indicate?

Mr. Chargin: That is a fifteen-hundred-dollar check, the first one I referred to.

The Witness: To Carl Koch.

Mr. Chargin: I wish at this time to introduce this check as an example of the deceased's handwriting, and also for the purpose of evidencing the date of that transaction.

Mr. Murray: No objection.

The Judge: It will be received as Petitioner's Exhibit No. 8.

(Whereupon the check above referred to was marked Petitioner's Exhibit No. 8 and received in evidence.)

[Printer's Note: Petitioner's Exhibit No. 8 is set out at page 291 of this printed record.]

Mr. Chargin: May we also have permission to introduce one dated September 1st, '38, signed by Mr. Koch, and one of October 24th, '38, signature of Mr. Koch, and one of October 31st, '38.

Mr. Murray: No objection.

Mr. Chargin: If we may introduce those next in order. There is no objection, Your Honor.

The Judge: Very well. 9, 10 and 11, three checks.

Mr. Chargin: Four checks.

The Clerk: No, that is one; 8, 9, 10 and 11.

(Testimony of George Adolph Koch.)

The Judge: Very well. [179]

(Whereupon the checks above referred to were marked Petitioner's Exhibits 9, 10 and 11 and received in evidence.)

[Printer's Note: Petitioner's Exhibits No. 9, No. 10 and No. 11 are set out at pages 291 and 292 of this printed record.]

By Mr. Chargin:

Q. Now, with reference to this transaction, as evidenced by the check dated November 6th, 1938, do you recall the circumstances surrounding it?

A. I do. The year before when he went to Denver his brother was in trouble; he gave him either five or ten thousand dollars, and settled his affairs up. He was in the coal and wood business. And instead of going through bankruptcy, my father went back there and went to all of his creditors—I just don't know the amount, but it was between five and ten thousand dollars—and cleaned up his affairs and settled them.

The next year he wrote for more money, and I believe he gave him \$2500.00. And he got involved again and he asked for another fifteen hundred. And this is the one that Mrs. Compton refers to that he asked her to write a check out, and by mistake—I don't know whether she wrote it out for twenty-five hundred or thirty-five hundred, but she wrote it out by mistake. And he didn't want to hurt her feelings, so he tore it up and wrote the correct one, himself. That is the history of that check.

(Testimony of George Adolph Koch.)

Q. Is that completely all in his own handwriting? [180] A. Yes, sir.

Q. I see. Now, with reference to the next exhibit, the check of September 21, '38, payable to Ralph Swickard, \$500.00. Now, are you able to relate and do you know the facts surrounding that check?

A. I do. But I would have to start in with the one ahead of this, if I may, to give you the history.

Q. Do you know what that \$500.00 was for?

A. Yes. This is the check that he gave Ralph to start in, for his tuition, to start in Stanford University.

Q. I see. And that was in the fall of '38, is that right?

A. That is September 21st, 1938.

Q. What were the circumstances just preceding the execution of that check?

A. Well, the boy didn't have enough credits when he got out of high school, and there was a preparatory school down at Monterey, and the boy asked him to go down there, and Father talked it over with me, and so he had given him \$250.00 to go down to the preparatory school. And that is when the trouble started with the stepmother. The stepmother came to my father and had quite an argument. She said that the boy hadn't gotten his credits down at Monterey, that he had just squandered the money, and if there was any further money to be given, she wanted to handle the funds. And then [180½] my father became very much dis-

(Testimony of George Adolph Koch.)

turbed over that, because they had had quite a few fallings-out because she had never treated the boy right. She said she didn't want him to go to Stanford, that her own boy didn't have an opportunity, and there was no reason that he couldn't go to our State school here and live home. But my father said, "Well, George's boy"—that is my boy—"is going to Stanford, and I want Ralph to have the same opportunity that George's boy had, and I am going to see him through Stanford." So both the father and mother came over to visit him in a day or so. And my father said he was going to give the boy \$500.00 to start Stanford. He had been given his credits. So I came down that next day, my father phoned me, he wanted to see me. And he says, "George, I don't like the way Ralph's father and mother are acting, and," he said, "I gave him \$500.00 and told both the mother and father that the boy had gotten his credits and he was going to Stanford and they said, 'Well, he isn't going to Stanford, we can't see him through.'" He said, "Well, I am going to see the boy through." And so the father said, "Well, how do we know that you are not going to croak, Mr. Koch, and that this money is going to come forth?" He said, "Don't worry about me croaking," he said, "I'll live longer than you do, but," he says, "If I don't, I am going to make provisions with George where the boy will be taken care of."

So that is the story of this check. [181]

(Testimony of George Adolph Koch.)

Q. Subsequent to this time, then, what provision was made for Ralph's education?

A. Well—

Q. (Continuing): —and future provision?

A. From then in, why, my father and I got together on securities and funds so that the boy could get his education through Stanford.

Q. All right. With reference to the question of getting together on securities, what do you mean? When did you get the securities from your father?

A. Well, this was around the holidays. So he told me to come down around—it was in December, I came down quite a bit. We talked it over, and we went down to the bank and got together, decided on the securities we wanted to take out of the box and put in the boy's trust account.

Q. Now, these transfers were made over at the safe deposit box?

A. Yes, at the First National Bank.

Q. The First National Bank. Now, have you since you were in court this morning—Did you look at this ninety-day report with regard to a list of securities held by you? A. I did.

Q. And does that refresh your memory with regard to these transfers of the \$79,000.00?

Mr. Murray: If Your Honor please, I would like [182] to suggest for the record that as to the ninety-day report I haven't heard any reference to it before, and the record might not be clear on it; I would like to know what this is, please.

Mr. Chargin: It is a report of the government

(Testimony of George Adolph Koch.)

here assessing their determination, as to the deficiency, against all these items.

Mr. Murray: That is the deficiency notice.

Mr. Chargin: The ninety-day letter.

Mr. Murray: Which is in evidence by the pleadings, is that right?

Mr. Chargin: Yes. And I imagine your case will also show this complete report of the Treasury Department.

Mr. Murray: All right.

Mr. Chargin: Q. Now then, are you able to say offhand the nature of the securities that were given you at that time?

A. Yes, they are all here. We took securities, bonds and stocks comparable, that amounted to about \$79,000.00.

Q. Do you know the nature of most of those securities, the kind, what one in particular?

A. Well, I think there was one—it doesn't list it—Item 6, \$15,650.00, I am sure that was 100 shares of American Telephone; it was about 156 then. I don't just recall. [183]

Q. Do you know of any other shares?

A. Here is one, fifty-three hundred. I am sure that if \$5000.00 worth of Edison's bonds of some kind. I just don't recall every item. I could go through here, if you want.

Q. I mean, could you just call the name of some of the stock?

A. Well, yes, there was American Telephone Company; there was 500 shares of Byron Jackson;

(Testimony of George Adolph Koch.)

there was 500 shares of Pacific Gas & Electric preferred; there was \$10,000.00 in cash; there was some Building & Loan stock—just at random, I am just saying that is about what they were. We figured at the time if the boy had this stock and income, if anything would happen to him it was in his name, that I would have the interest on this to put the boy through university. That was the idea in this gift.

Q. And what was the amount there, the approximate amount of the securities transferred to you for Ralph? A. \$79,000.00.

Q. Seventy-nine?

A. Seventy-nine thousand dollars; \$79,001.53.

Q. Did you at that time receive securities for yourself?

A. Yes. And my father said to me "Now, George, I want you to take the same comparable amount for yourself." [184] Which I did. But there is a difference of \$290.00 there, and ninety-eight cents. And that was in the market value of some bonds.

Q. All right. Now, subsequent to that time did you receive any further sum from your father? What was the date of that, December, '38?

A. Yes.

Q. Give us the date.

A. I don't see any date on this.

The Judge: December 20th, 1938.

The Witness: December 20th, 1938, that's right, yes.

(Testimony of George Adolph Koch.)

By Mr. Chargin:

Q. Now, subsequent to that time, did you receive any more sums? A. Yes, later.

Q. What did you get from your father?

A. Well, I got around \$23,000.00; and also the boy.

Q. And what was it, in cash, securities or what?

A. It was mostly in cash. Some real estate.

Q. Was it in one lump sum or several sums?

A. Well, I drew it out—We had money in the savings bank and we had money in the commercial account, and there was some real estate.

Q. Yes. [185]

A. And there was some building—there was a thousand-dollar building and loan certificate.

Q. I see. Were you present when that was drawn out or did you draw it out?

A. I drew it out.

Q. How did you happen to draw it out?

A. Because I had a joint account with my father.

Q. You had a joint account with your father?

A. That's right.

Q. And did you get anything at that time or were further gifts received at that time for Ralph?

A. The same amount.

Q. The same amount. Was there a slight difference between what you received and what Ralph received?

A. Yes, there was a difference because he had an automobile which he always wanted the boy to

(Testimony of George Adolph Koch.)

have, and he told me to put the automobile in the boy's name. And there was ten shares of First National Bank stock that he told me to keep for myself. And that was the difference; about \$2200.00.

Q. Was that the automobile, the same automobile that he had purchased the previous year?

A. That's right.

Q. When did the boy receive that, do you know?

A. I gave the boy the automobile—I wanted to give [186] it to him immediately when my father died, but his stepmother wouldn't let me give it to him, said he didn't need an automobile. I said, "Well, that is my father's request in his will, whether you like it or not he is going to get it." So I transferred it to his name and gave it to him, and he has got it today.

Q. Now, this other check payable—dated October 24, 1938, payable to Ellsworthy & Company—what is Ellsworthy Company, do you know?

A. Yes, they are a bond house.

Q. What is the amount of that check?

A. \$5164.58.

Q. What was that?

A. He bought five thousand dollars worth of bonds, Chicago Edison, or New York Edison bonds. I have them now. I just don't recall.

Q. Your father purchased those bonds?

A. He did.

Q. On October 24th, 1938?

A. That's right.

Q. And that signature is his own handwriting?

(Testimony of George Adolph Koch.)

A. That's right.

Q. Is the body of the instrument his handwriting? A. Well, he wrote the whole thing.

Q. The whole thing. I show you a check dated [187] October 31, 1938, payable to the tax collector of Santa Clara County, Roy P. Emerson. What was that for?

A. Well, that is the three pieces of real estate he owned.

Q. What is the amount of that check?

A. \$488.37.

Q. And is that in his own handwriting?

A. That's right.

Mr. Chargin: I think I have a couple more here.

Mr. Murray: Is that another exhibit, may I ask? Have you placed another exhibit in, yet?

Mr. Chargin: No, not as yet. That is the same one. I guess that is enough.

By Mr. Chargin:

Q. Do you know why some of the transfers were made in December of 1938 and some were made in January, '39?

A. Well, yes. Because we had—I think it was a five-thousand-dollar deduction that year, we were allowed a five-thousand-dollar deduction each year, so rather than make it all in December, we waited until the 1st of January so we would get another deduction for tax purposes.

Q. Were you ever advised by your father or

(Testimony of George Adolph Koch.)

his attorney, back sometime in 1930 that he was going to do something for you, or give you something? A. I was. [188]

Q. What were the circumstances, the time and place and what transpired?

A. Well, I was up to the Shrine Temple in San Francisco at the time. They had kind of a punchboard contest where you sell tickets and you get electric toasters and all that kind of stuff. And I was up there getting my toaster, or whatever it was, and I met Mr. Hellwig. I only met the man once in my life. And he come up to me and he was up there getting some kind of a prize, and he said, "George," he says, "your father has been talking to me and said he wanted to make you a present, you and Ralph, of a considerable sum of money, and," he said, "sometime when you are down there, I want you to talk to your father, because he has approached me on that subject." But I said, "Oh, we'll let it go." I never paid much attention to it. So my father approached me one day a few months later, and then is when I got in trouble on this Gorman-Kaiser deal, so we didn't go through with it.

Q. Did you advise your father that you were involved, at that time?

A. Well, he knew it, he knew it because he had helped me out, financially.

Q. Now, this morning you testified that you received some flats at the time you were married. What was the amount?

(Testimony of George Adolph Koch.)

A. Around \$30,000.00. [189]

Q. Did you receive any subsequent sums after that? A. Well yes; forty thousand he gave me.

Q. That was when you went into business?

A. That is when I went into that stock and bond business.

Q. Did you receive any other sums previous to the time you went in the stocks and bonds business?

A. Yes, earlier I got some from him; one time ten thousand, another four. He gave me money from time to time.

Q. How did your father feel towards you with regard to your business capabilities, capacity for making money and so forth?

A. Well, I suppose like all sons, he told everybody else I was a wonderful businessman, but to me he always treated me like a little boy, and I was always just a son. But I think he thought that I was a good businessman. And if he hadn't of thought that, I don't think he would have left this estate to me without—left Ralph's half in my care without any bond, which he did. So, I think my father had a great deal of confidence in me.

Q. On the question of the execution of this trust, how did you go about having this trust prepared, do you recall that now? After the discussion in the fall of the year, about taking care of Ralph's education and so forth, did you see Mr. Johnston, or your father see Mr. Johnston? [190] Do you recall the circumstances there?

(Testimony of George Adolph Koch.)

A. Well, I will tell you. Naturally, with trouble in the family with the stepmother like the boy had, and my father thinking so much of the boy, I didn't want any family troubles. I had never had any trouble with my brother-in-law, and I had never had any trouble with the sister-in-law. I never had any words with them; my father had all the trouble with them on account of the boy, and I wanted to stay out of it. And when we got this money together, my father was very bitter about this woman's treatment of the boy, so he did everything he could for her, and he could never win her over, and he never wanted her to have a nickel of his money; it was an obsession with him, I would say. So he told me, he says "When Ralph gets this money, George, I want it fixed so that Frances will never get a dollar of it." He said, "I don't mind the father getting it, but I never want that woman to have a nickel of it, because she has never been a mother to that boy, and I want you to promise me that." So, I was working at the Hotel Whitecomb then, I was busy, and I would come down here. I had taken the securities home with me, and put them in a San Francisco safe deposit box. So I called up Mr. Johnston here and I said, "Faber, I got these securities for Ralph, supposing something happens to me? My father doesn't never want these to go back to the stepmother's end of the family. What am I going to do?" [191] So Mr. Johnston suggested this trust to me. And I said,

(Testimony of George Adolph Koch.)

“Well, fix it up, I don’t know anything about it.”
And that is the way that trust was made.

Q. Did you go to the office at the time, do you recall?

A. I don’t remember now. I naturally came—I did all my business with him in San Jose, yes. He never came to San Francisco. So it was signed here.

Q. Do you know what the purposes of the trust were, so far as your interests were concerned in it?

Mr. Murray: Your Honor, please, I object to that on the basis the trust is in evidence and speaks for itself.

The Judge: Yes, I think we went over that generally this morning, and the trust is in evidence.

Mr. Chargin: I don’t want to be repetitious, but I thought I might have overlooked it.

By Mr. Chargin:

Q. You were to receive that trust in the event that Ralph should die before he became of the age of thirty-five? A. That was to go to me.

Q. Yes.

A. In fact, in his will today, the boy doesn’t get his money until he is thirty-five; and if the boy happens to die before then, I get all of his estate.

Q. Now, during the spring of 1938 when your father [192] had Dr. Cottrell attend him, do you know what took place, or did you come down and see your father during the month of May?

(Testimony of George Adolph Koch.)

A. Yes. I got a phone message from Mrs. Compton, who was housekeeper for him, that my father had taken ill, and she had called Dr. Cottrell. I had never met Dr. Cottrell and I was surprised that they got Dr. Cottrell, because Dr. McGinty lived next door and he had always attended him before, and he was friendly. In fact, he uses our garage right now; they haven't a driveway. And my children and his children have been back and forth visiting when they went to school. And I was surprised. So when I come down she said, "I didn't know who to call, Mr. Koch, but Dr. Cottrell belongs to the Commandery with him and he is an old crony. I don't think there is much wrong with your father. Mrs. Doerr said he was a good doctor friend of theirs, so I called him in." So Cottrell was there. I said, "Well, what is the matter, Doctor?" He said, "Well, I don't know, but," he says, "I want you to get a pulley and have a rope hung up on the wall there for your father, have his leg pulled up." And so I said I would get a carpenter. And I had this pulley arranged. So father seemed all right. He just said his leg bothered him. He was in bed. So I came down the next day, and he wouldn't use this thing; never did use it. So I kept coming down every day, and Mrs. Compton said to me, [193] "I don't think there is anything that this doctor has to do to keep coming every day." I said, "Let him come, my father thinks he is visiting here, it is kind of a Masonic call, maybe it will do him some good." "Well,

(Testimony of George Adolph Koch.)

if you want it, all right," she says, "he is making a call every day and he isn't doing anything for him, he isn't giving him any medicine and you are paying him for it." I said, "Oh, it doesn't make any difference, maybe it will satisfy him." So in about a couple of weeks my father says, "Did you tell Cottrell to come here every day?" And I said, "Well, no, I didn't tell him to come every day, I told him to visit." Well, he said, "You know he is charging me \$3.00 a day, and," he says, "he has run up a bill to \$90.00, so I fired him today and wrote a check out."

So that is the extent of Cottrell's visits. And what I think of Cottrell is very little, as far as a doctor goes. I had a cinder in my eye and I went up to see him, and I am sorry I ever went to him, because I got about half the sight of my left eye today on account of him taking the cinder out of my eye. That is why we called in McGinty when my father got sick the second time, because I have no confidence in the man.

Mr. Murray: If your Honor please, I ask that the comments about Dr. Cottrell be stricken as not responsive to the question, and irrelevant and immaterial in this case.

The Judge: Overruled. [194]

By Mr. Chargin:

Q. What was your father's health after that time, after that illness? Was he up and around again?

A. Well, so far as his health was concerned, all my father knew was business. He never knew how to play, and he never let me play, and that is all I know. And all we talked about was business. Out-

(Testimony of George Adolph Koch.)

side of this limp, and coming down to see him, he ate well and we would have a cocktail together, and he talked business until the morning he died. And he gave me orders to take him out in an ambulance. I never have seen him any different than I have seen him since by boyhood days. It was all business and work, and that is all I ever knew of him until the day they took him away to the hospital.

Mr. Chargin: No further questions.

Mr. Murray: I just have a question or two, Mr. Koch.

Cross-Examination

By Mr. Murray:

Q. I understood you to say a while ago that you had a joint account with your father. What kind of a joint account or accounts did you have with him, please?

A. Well, I had a joint commercial account with him, but not in the savings account, or any of his others—not in his Building & Loan account. We made that for convenience.

Q. That was a checking account, wasn't it? [195]

A. A checking account.

Q. And either could draw on it?

A. That's right.

Q. Well now, did you not have a joint safety deposit box with him, also, at one time?

A. Well, he gave me his key years ago, but I never took the privilege of ever opening it until he wanted me to go down with him at the time we took these se-

(Testimony of George Adolph Koch.)

curities out for Ralph and myself; that is the first time I ever was in the box with my father.

Q. Now, is it not true that some of the securities or all of them were endorsed in blank by your father?

A. My father always kept all of his securities at all times that way; as soon as he bought any securities he always endorsed them.

Q. Endorsed them in blank?

A. Always. What do you mean "in blank"? His name?

Q. Yes.

A. That's right. He signed every security the same as it was made out to him, in his name.

Q. So that whenever he would tell you to go to the box, or on any occasion you would go to the box because you had the key, you could negotiate the whole thing without any need of his signature or anything, anything further, that is right, isn't it? [196]

A. Well, I never went to the box except at the time that we took out these first two lots in December of '38; that is the first time I ever went to the box with my father. He always told me that he kept his securities endorsed, but I had never seen them or been in his box, never seen what he had, didn't know what he was worth.

Q. Well, on the occasion when you did go to the box to get the securities, you could handle the whole thing yourself, isn't that right, you didn't need any further signature from your father?

A. I wouldn't say that, because I don't know. I don't presume that any stock company—in fact, I

(Testimony of George Adolph Koch.)

know it, being in the stock business I will say this, you couldn't take, even with an endorsed signature, and go to any stock house without a guarantee, and get the instrument negotiated. So it woudn't do any good.

Q. Well, at any rate, they were all signed?

A. They were all signed.

Q. By your father. He didn't have to sign them again?

A. That's right.

Q. That's right. In the joint checking account, commercial account, how did the money get in there when it was placed in there, who put it in?

A. Oh, he always put it in.

Q. He always put the money in. [197]

Q. Do you *know much* your father had other than what is the subject of this question on this trial, how much estate he left at the time of his death?

A. No. The records show that, around one hundred and forty or fifty-thousand-dollar estate. Mr. Johnston has got it right there, I think. I have got the papers home, I haven't got them with me.

[198]

PETITIONER'S AND RESPONDENT'S
JOINT EXHIBIT A-1

[Stamped]: Received, Nov. 7, 1939 Estate Tax
Division, San Francisco.

Form 706

Treasury Department
Internal Revenue Service
Revised September 1936

(Space for use of collector)
Received

[Stamped]: Received with remittance, Oct. 19,
1939. Collector of Internal Revenue, First District
California.

ESTATE TAX RETURN

(To be filed in duplicate)

Decedent's name—Adolph J. Koch

Date of death—June 29, 1939

Residence at time of death—San Jose, California

Citizenship at time of death—United States

GENERAL INSTRUCTIONS

Current Estate Tax Laws

Current Federal estate taxation consists of, first, the estate tax imposed by the Revenue Act of 1926, as amended, and, second, the additional estate tax imposed by the Revenue Act of 1932, as amended.

Basic act.—The Revenue Act of 1926, enacted 10:25 a. m., eastern standard time, February 26, 1926, imposes an estate tax against which credit

(Petitioner's and Respondent's Exhibit A-1—
Continued)

not in excess of 80 percent of such tax is allowable for inheritance, estate, legacy, or succession taxes paid a State, Territory, or the District of Columbia of the United States. Under this act, as amended, a specific exemption of \$100,000 is authorized for the estate of a resident or citizen of the United States (or a resident only, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934). Such basic provisions as those relating to the composition of the gross estate are set forth in this act and are not repeated in the act which imposes the additional estate tax.

Act imposing additional estate tax.—The Revenue Act of 1932, enacted 5 p. m., eastern standard time, June 6, 1932, imposes an additional estate tax against which no credit is allowable for inheritance, estate, legacy, or succession taxes. Under this act, as amended, a specific exemption of \$40,000 is authorized for the estate of a resident or citizen of the United States who died on or after August 31, 1935. If the decedent died prior to August 31, 1935, a specific exemption of \$50,000 is authorized for the estate of a resident or citizen of the United States (or a resident only, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934.)

Amendatory acts.—The Revenue Act of 1934, enacted 11:40 a. m., eastern standard time, May 10, 1934, places the estates of non-resident citizens of

(Petitioner's and Respondent's Exhibit A-1—
Continued)

the United States in the same category with estates of residents by making the specific exemptions applicable and by including for tax property situated outside the United States. This act also increases the rates of the additional estate tax imposed by the Revenue Act of 1932 (effective for estates of decedents dying on or after May 11, 1934).

The Revenue Act of 1935, enacted on August 30, 1935, increases the rates of the additional estate tax imposed by the Revenue Act of 1932, as previously amended, reduces the specific exemption to \$40,000, and provides an optional valuation whereby an estate that suffers a shrinkage in value subsequent to the decedent's death may be relieved of an undue tax burden that would result if such estate were valued as of the date of the decedent's death.

Other amendatory acts which effected changes in certain details are: The Revenue Act of 1928, May 29, 1928; Public Resolution No. 131, Seventy-first Congress, March 3, 1931; and the Revenue Act of 1936, June 22, 1936.

Return Required for Estate of Resident or Citizen

A return on this form must be filed for the estate of every resident or citizen of the United States who died on or after August 31, 1935, and whose gross estate as defined by the statute exceeded \$40,000 in value at the date of death. The return is required for the estate of every resident or citizen of the United States who died prior to August 31, 1935, and subsequent to 11:40 a. m., eastern stan-

(Petitioner's and Respondent's Exhibit A-1—
Continued)

dard time, May 10, 1934, and whose gross estate exceeded \$50,000 in value at the date of death. For estates of decedents who died prior to the enactment of the Revenue Act of 1934, see articles 63 and 70 of Regulations No. 80.

The value of the gross estate at the date of the decedent's death governs the liability for the filing of the return regardless of any valuation as of a subsequent time that may be adopted by the executor under the provisions of subdivision (j) of section 302 of the Revenue Act of 1926, as added by section 202 of the Revenue Act of 1935, since such option may only be exercised by a statement on the return.

Return Required for Estate of Nonresident Alien

A return on this form is required for the estate of every nonresident alien of the United States (or nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) any part of whose gross estate was situated, within the meaning of the statute, in the United States. No specific exemption is authorized in the case of a nonresident alien (or non-resident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934).

Time and Place for Filing Return

The return is due 15 months after the date of death if the decedent died on or after August 31, 1935, and 1 year after the date of death if the decedent died before August 31, 1935. The return

(Petitioner's and Respondent's Exhibit A-1—
Continued)

for the estate of a resident decedent must be filed with the collector in whose district the decedent had his domicile at the time of death. The return for the estate of a nonresident decedent must be filed with the collector in whose district the gross estate in the United States was situated; or, if the gross estate in the United States was situated in more than one district, or, if in the case of a nonresident citizen who died after the enactment of the Revenue Act of 1934, no part of the gross estate was situated in the United States, it must be filed with the Collector for the Second District of New York, or with such collector as the Commissioner may designate.

Payment of Tax

The tax is due 15 months after the date of death if the decedent died on or after August 31, 1935, or 1 year after the date of death if the decedent died before August 31, 1935, and must be paid within such period unless an extension of time for payment thereof has been granted by the Commissioner. Check or money order in payment of the tax should be made payable to "Collector of Internal Revenue at.....", naming city and State in which is located the office of the collector with whom the return is filed.

Gross Estate

In addition to property passing under a will or the intestate laws, the gross estate for the purpose of the estate tax includes, as more specifically ex-

(Petitioner's and Respondent's Exhibit A-1—
Continued)

plained hereinafter, certain transfers made during the decedent's life without an adequate and full consideration in money or money's worth, joint estates with right of survivorship, tenancies by the entirety, life insurance even though payable to beneficiaries other than the estate, property over which the decedent exercised a general power of appointment, and dower, courtesy or statutory estate in lieu thereof, of the surviving spouse.

Property Situated in the United States

In the case of the estate of a nonresident alien (or of a nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) the statute reaches only property situated in the United States at the time of death, except that property transferred during the decedent's life and described under Schedule G is included if such property was situated in the United States either at the time of the transfer or at the time of death. The term "United States", when used in a geographical sense, includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia. Real estate and tangible personal property are situated in the United States if physically therein. Certificates of stock, bonds, bills, notes, and other written evidences of intangible property which are treated as being the property itself, are property situated in the United States if physically situated therein. Except certain insurance and bank deposits hereinafter de-

(Petitioner's and Respondent's Exhibit A-1—
Continued)

scribed, intangible personal property has a situs in the United States if consisting of a property right issuing from or enforceable against a corporation (public or private) organized in the United States or a person who is a resident of the United States, such as corporate stock issued by such a corporation, or a simple debt, bond, note, or other chose in action for which such a corporation or individual is liable. Under an express provision of the statute, proceeds of insurance upon the life of a nonresident alien (nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) and bank deposits of such decedent, who was not engaged in business in the United States at the time of his death, are not regarded as property in the United States.

Supplemental Documents

If the decedent was a resident and died testate, two copies of the will, one of them certified, must be filed.

If the decedent was a nonresident citizen who died after the enactment of the Revenue Act of 1934, the following documents must be filed with the return:

(1) A copy of the inventory of property and the schedule of liabilities, claims against the estate and expenses of administration filed with the foreign court of probate jurisdiction, certified by a proper official of such court.

(Petitioner's and Respondent's Exhibit A-1—
Continued)

(2) A copy of the return filed under the foreign inheritance, estate, legacy, or succession tax act, certified by a proper official of the foreign tax department, if the estate is subject to such a foreign tax.

(3) If the decedent died testate, a certified copy of the will.

If the decedent was a nonresident alien (or a nonresident, regardless of citizenship, if he died prior to the enactment of the Revenue Act of 1934) the following documents must be filed:

(1) If deductions are claimed, certified copies of the inventory and schedule or a certified copy of the return, as described in the preceding subparagraphs (1) and (2).

(2) If the decedent died testate, a certified copy of the will.

Other supplemental documents may be required as hereinafter explained under the instructions for the several schedules.

Execution of Return

This form consists of the cover sheets and 19 inside sheets numbered in consecutive order. A complete set should be used for every copy of the return required. For convenience in typing carbon copies the sets as issued may be readily separated and the corresponding sheets matched. When completed, each copy of the return to be filed must be permanently fastened together with all sheets in proper order. Any suitable type of paper fastener

(Petitioner's and Respondent's Exhibit A-1—
Continued)

may be utilized for this purpose. Ordinary wire staples are recommended for the return of average size. The return must be filed in duplicate. All sheets provided, numbered I to XXI, must be included.

Write only on one side of each sheet of paper. If there is not sufficient space for all entries under any of the printed schedules, use additional sheets of the same size, and insert in the proper order in the return. All information required, as indicated under "General Information", must be supplied in the spaces provided. The questions asked under each schedule must be specifically answered, and if the decedent owned no property of any class specified for the schedule, the word "None" should be written across the schedule.

The gross estate must be set forth under the appropriate Schedules A to I. The deductions, except amounts claimed for the specific exemptions and property previously taxed, should be shown under the appropriate Schedules J to N. The amounts deducted for the specific exemptions and property previously taxed should be shown under Schedules P and Q, or under Schedule R. If the gross estate of a resident or citizen (resident only, if the decedent died prior to the enactment of the Revenue Act of 1934) exceeds \$100,000 the net estate for the tax imposed by the Revenue Act of 1926, as amended, should be computed under Schedule P. The net estate for the additional tax im-

(Petitioner's and Respondent's Exhibit A-1—
Continued)

posed by the Revenue Act of 1932, as amended, on the estate of a resident or citizen (resident only, if the decedent died prior to the enactment of the Revenue Act of 1934) should be computed under Schedule Q. The net estate for a nonresident alien (nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) should be computed under Schedule R.

For every item of principal, any amount of income accrued thereon at the date of the decedent's death must be separately entered under the column headed, "Value at date of death"; and, if the optional valuation is adopted, for every item of principal, any amount of income accrued thereon at the subsequent date as of which such item of principal is valued, and any amount of income collected thereon between the date of death and such subsequent date, must be separately entered under the column headed "Value under option."

The items should be numbered under every schedule and a separate enumeration should be used for each schedule. The total for each schedule should be shown at the bottom of the schedule. The totals should not be carried forward from one schedule to another, but the total or totals for each schedule should be entered under the Recapitulation, Schedule O.

The information indicated by the columns headed "subsequent valuation date" and "Value under op-

(Petitioner's and Respondent's Exhibit A-1—
Continued)

tion" should not be shown unless the executor adopts the optional valuation authorized by subdivision (j) of section 302 of the Revenue Act of 1926, as added by section 202 of the Revenue Act of 1935. If such optional valuation is not adopted the space in the columns headed "Subsequent valuation date" and "Value under option" may be utilized for descriptive matter, as indicated in the examples shown under the instructions for Schedules A and B. Similar information should be omitted in the space provided therefor under the Recapitulation, Schedule O, if the optional valuation is not adopted.

The computation of the tax must be shown in detail as indicated on sheet XX. If the executor determines no liability for tax, the word "None" should be shown at item 11 under "Computation of Tax."

The filing of this form will not be considered the filing of a complete return as required by the statute and the regulations issued pursuant thereto unless all the information as indicated herein is set forth.

If there is more than one executor or administrator, all must sign and swear to (or affirm) the return. The affidavit may be sworn to before any person authorized to administer oaths except the attorney or attorneys representing the taxpayer. If the officer has an official seal, such seal must be affixed.

(Petitioner's and Respondent's Exhibit A-1—
Continued)

If there is no executor or administrator appointed, qualified, and acting in the United States, every person in actual or constructive possession of any property of the decedent is constituted by the statute an executor for the purposes of the tax (section 300 (a) of the Revenue Act of 1926), and is liable for the filing of the return. If two or more persons are liable for the filing of the return, it is preferable for all to join in the filing of one complete return, but if they are unable to join in making one complete return, each is required to file a return disclosing all the information he has in the case, including the name of every person holding an interest in the property and a full description of such property. If the appointed, qualified, and acting executor or administrator is unable to make a complete return, the statute requires that every person holding an interest in the property shall, upon notice from the collector, make a return as to such interest.

The person or persons that file the return must, in every case, execute the first affidavit on sheet XX. If the return is prepared by an attorney or agent for the person or persons filing this return, the second affidavit on sheet XX must also be executed, and executed only by such attorney or agent.

If the taxpayer desires to be represented by an attorney, by correspondence or otherwise, a power of attorney must be filed. For this purpose, Form 711, obtainable from any collector, may be executed.

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Valuation

Unless the executor elects otherwise at the time the return is filed, all property included in the gross estate must be valued as of the date of the decedent's death. The date of the decedent's death is the only valuation date permitted for the estate of a decedent who died prior to August 31, 1935.

Optional Valuation

If the executor elects to adopt the valuation authorized by subdivision (j) of section 302 of the Revenue Act of 1926, as added by section 202 of the Revenue Act of 1935, such election must be expressly indicated in the space provided under "General Information." The election is available only at the time the return is filed, and cannot thereafter be rescinded.

Section 202 (Revenue Act of 1935.) Estate Tax—Valuation.—

(a) Section 302 of the Revenue Act of 1926, as amended, is amended by adding a new subdivision as follows:

“(j) If the executor so elects upon his return (if filed within the time prescribed by law or prescribed by the Commissioner in pursuance of law), the value of the gross estate shall be determined by valuing all the property included therein on the date of the decedent's death as of the date one year after the decedent's death, except that (1) property included in the gross estate on the date of death

(Petitioner's and Respondent's Exhibit A-1—
Continued)

and, within one year after the decedent's death, distributed by the executor (or, in the case of property included in the gross estate under subdivision (c), (d), or (f) of this section, distributed by the trustee under the instrument of transfer), or sold, exchanged, or otherwise disposed of, shall be included at its value as of the time of such distribution, sale, exchange, or other disposition, which ever first occurs, instead of its value as of the date one year after the decedent's death, and (2) any interest or estate which is affected by mere lapse of time shall be included at its value as of the time of death (instead of the later date) with adjustment for any difference in its value as of the later date not due to mere lapse of time. No deduction under this title of any item shall be allowed if allowance for such item is in effect given by the valuation under this subdivision. Wherever in any other subdivision or section of this title or in Title II of the Revenue Act of 1932, reference is made to the value of property at the time of the decedent's death, such reference shall be deemed to refer to the value of such property used in determining the value of the gross estate. In case of an election made by the executor under this subdivision, then for the purposes of the deduction under section 303 (a) (3) or section 303 (b) (3), any bequest, legacy, devise, or transfer enumerated therein shall be valued as of the date of decedent's death with adjustment for any difference in value (not due to

(Petitioner's and Respondent's Exhibit A-1—
Continued)

mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date one year after the decedent's death (substituting the date of sale or exchange in the case of property sold or exchanged during such one-year period.)"

(b) The amendment made by this section shall be effective only with respect to transfers of estates of decedents dying after the date of the enactment of this Act.

In general, the object of subdivision (j) of section 302 is to make provision whereby the amount of tax otherwise payable may be lessened when, within the year following the decedent's death, the gross estate has suffered a shrinkage in its aggregate value.

If the decedent died after August 30, 1935, the executor may, by an election duly made upon this return, have the property which was included in the gross estate on the date of the decedent's death valued as of the applicable dates, as follows:

(1) Any property distributed, sold, exchanged, or otherwise disposed of within 1 year after the decedent's death, valued as of the date of such distribution, sale, exchange, or other disposition, whichever first occurs;

(2) Any property not distributed, sold, exchanged, or otherwise disposed of within such 1-year period, valued as of the date 1 year after the date of the decedent's death;

(Petitioner's and Respondent's Exhibit A-1—
Continued)

(3) Any property, interest, or estate which is "affected by mere lapse of time", valued as of the date of decedent's death; except that an adjustment is to be made for any difference in its value, not due to such lapse of time, as of the date 1 year after the date of decedent's death, or as of the date of its distribution, sale, exchange, or other disposition, whichever first occurs.

Property "distributed" is limited to distributions thereof by the executor, or by the trustee in the case of property included in the gross estate under subdivision (c), (d), or (f) of section 302, as amended. (Subdivisions (c) and (d) pertain to certain transfers during the decedent's life and subdivision (f) pertains to property passing under a general power of appointment.) Distribution may be effected by the entry of the order or decree of distribution, or if there is no such order or decree, by the segregation or separation of the property from the estate or the trust, or by the actual paying over or delivery of the property to the person entitled thereto by the will, or under the law, or by the terms of the trust.

The sale, exchange, or other disposition, to which the subdivision refers, may be one made by the executor, or by the trustee of property included in the gross estate under subdivision (c), (d), or (f) of section 302, as amended, or by any other person to whom the property had not been distributed by the executor or by such a trustee, or to whom it

(Petitioner's and Respondent's Exhibit A-1—
Continued)

had not passed from the gross estate as the result of a sale, exchange, or other disposition thereof, as, for example, a sale, exchange, or other disposition by an heir, devisee, donee, or grantee to whom the decedent in his lifetime transferred the property, or by the survivor of the decedent if the property had been held by them subject to the right of survivorship.

Property, in the case of a sale, exchange, or other disposition thereof within the 1-year period, is to be valued as of the date when it ceases to form a part of the gross estate, that is, the date when the title passes as the result of its sale, exchange, or other disposition. The terms, "distributed", "sold", "exchanged", "or otherwise disposed of", comprehend all possible ways by which property may be separated or passed from the gross estate. Thus, money on hand at decedent's death which is thereafter used in the payment of the funeral expenses, or in settlement of claims against the estate, or is invested, falls within the term "otherwise disposed of".

The property to be valued as of 1 year after the date of decedent's death, or as of that date, or as of some intermediate date, is the property included in the gross estate on the date of the decedent's death. As property and its value are separate and distinct, the former denoting legal rights, the latter the monetary measure of such rights, and as the subdivision treats of the two separately, it will be

(Petitioner's and Respondent's Exhibit A-1—
Continued)

necessary in every case first to determine what property constituted the gross estate at decedent's death. Other subdivisions of section 302, as amended, rather than subdivision (j), supply the information necessary to that determination, subdivision (j) being, in the main, confined to the date or dates as at which the value is to be ascertained.

Interest-bearing obligations, such as bonds and notes, embody two promises, one to pay principal and the other to pay interest, and both promises are a part of the gross estate at the death of the decedent, if the obligation was then owned by him, or had been previously so transferred by him, or at his death there was vested in him any such right or power in or with respect to the obligation as to bring it within any of the other subdivisions of section 302, as amended. If the valuation date is that of decedent's death, the principal of the obligation and interest then accrued and unpaid thereon are to be valued as of that date. If the valuation date is subsequent to death, the principal and interest then accrued and unpaid are to be valued as of that date. The valuation date of any part payment of principal or of any installment of interest, made between decedent's death and the date as at which the obligation is to be valued, will be the date of such payment. Subdivision (j) is subject to a like construction when any other obligation is involved, as, for example, one calling for the payment of rent or a royalty. Thus, in the case

(Petitioner's and Respondent's Exhibit A-1—
Continued)

of rent, if the realty and the obligation to pay the rent reserved were parts of the gross estate at the time of decedent's death, the value of the former must be determined as of the applicable valuation date, and also the value of the rent then accrued and unpaid reserved by the latter. The valuation date of any rent paid in the interim pursuant to the rental obligation will be the date of its payment.

As in the case of bonds and notes, the interest accrued and unpaid upon a judgment on the date as of which the judgment is to be valued is to be included in the valuation. The valuation date of any part payment of the judgment, or of any interest thereon (without regard to whether earned before or after decedent's death), made between decedent's death and the date as of which the judgment is to be valued, will be the date of such payment.

When corporate stock is a part of the gross estate at decedent's death, and a dividend in partial liquidation is thereafter paid on or before the date as of which the stock is to be valued, the valuation date of such dividend will be the date of its payment. Similarly, a dividend paid within the same period out of earnings, whether made or accumulated prior or subsequent to decedent's death, will be valued as of the date of its payment. Earnings of the corporation neither declared as a dividend nor paid between decedent's death and the valuation date of the stock, will be reflected in the value

(Petitioner's and Respondent's Exhibit A-1—
Continued)

of the stock. But a dividend declared prior to the valuation date of the stock but payable subsequent thereto will not be so reflected if "ex dividend" on valuation date of the stock, but is to be valued as of that date.

Differing from payments of principal and interest in the case of bonds and notes, those made upon a judgment are not pursuant to a promise but to an obligation imposed by law, which obligation, in its totality, is a part of the gross estate at decedent's death if coming within any of the other subdivisions of section 302 as amended. So, too, liquidating dividends and dividends paid from earnings are not pursuant to a promise but are referable to legal rights inherent in stock ownership.

Properties, interests, or estates which are affected by mere lapse of time include patents, estates for the life of another other than the decedent, remainders, reversions, and other like properties, interests, or estates. The phrase, "affected by mere lapse of time", has no reference to obligations for the payment of money, whether or not interest-bearing, the value of which changes with the passing of time. However, such an obligation, like any other property, may become affected by lapse of time when made the subject of a bequest or transfer which itself is creative of an interest or estate so affected.

The date of valuation of any property, interest,

(Petitioner's and Respondent's Exhibit A-1—
Continued)

or estate so affected is, as prescribed in subdivision (j), the date of decedent's death, but with an adjustment to be made of the value then obtaining, which adjustment, while disregarding any later increase or decrease in value due solely to lapse of time, adds to or subtracts from the value at death any difference between that value and the value as of the date 1 year after decedent's death, or the applicable intermediate date, if, and to the extent that, such difference was due to a cause or causes other than lapse of time. Accordingly, in the valuation of any property, interest, or estate affected by lapse of time, the difference between its value at decedent's death and its value as of the later date must be analyzed to determine the portion of such difference attributable to other cause or causes, and that portion only is to be applied in adjusting the value as of the date of the decedent's death. For further information and examples relative to the valuation of properties, interests, or estates which are affected by mere lapse of time, see the regulations issued pursuant to subdivision (j) of section 302 of the Revenue Act of 1926, as added by section 202 of the Revenue Act of 1935.

Deductions authorized under section 303 are limited to the extent that allowance thereof is not, in effect, given in the valuing of the gross estate. Property passing by decedent's will, or passing by a transfer made by the decedent in his lifetime (if the transfer was such as to require the property

(Petitioner's and Respondent's Exhibit A-1—
Continued)

transferred to be included in the gross estate) to or for any such public, charitable, or religious uses as are described in section 303 (a) (3) or in section 303 (b) (3), is deductible at its value as of the date of the decedent's death, subject, however, to adjustment for any difference in value 1 year after such death, or at the date of its sale or exchange. But no such adjustment may take into account any difference in value due to lapse of time or to the occurrence or nonoccurrence of a contingency.

The election is available to the executor only at the time the return is filed, and only if the return is filed within 15 months from the decedent's death or within the period of an extension of time for filing granted under the provisions of articles 68 or 69 of Regulations 80. The election applies to all the property included in the gross estate on the date of the decedent's death. It cannot be applied only to a portion of such property. The election, if made, cannot be rescinded.

In every case where the election is exercised, the return must set forth (1) an itemized description of all property included in the gross estate on the date of the decedent's death together with the value of each item as of that date, (2) an itemized disclosure of all distributions, sales, exchanges, and other dispositions of such property during the 1-year period after the decedent's death, together with the dates thereof, and (3) the value of each item of property determined as hereinbefore ex-

(Petitioner's and Respondent's Exhibit A-1—
Continued)

plained and in accordance with the regulations issued pursuant to subdivision (j). The amount of any income accrued at the date of the decedent's death on each item of principal, the amount of any income collected or otherwise realized thereon after the decedent's death and prior to the date as of which the item of principal is valued, and the amount of any income accrued thereon at such subsequent valuation date, shall be separately shown. The foregoing information must be shown under the appropriate columns of each schedule. Under the column headed "Description" a brief statement for each item must be shown explaining the status or transfer governing the subsequent valuation date, such as, "Not disposed of within year following death", "Distributed", "Sold", "Bond paid on maturity", etc. Under this same heading a description of each item of principal and income must be entered separately. Under the heading "Subsequent valuation date", a date for each separate entry of principal and income must be shown. Under the heading "Value under option" the amount of the principal, the amount of income accrued to the subsequent valuation date as of which the principal is valued, and the amount of each payment of any income collected with respect to such principal between the date of the decedent's death and such subsequent valuation date must be separately shown. In the case of any interest, or estate the value of which is affected by mere lapse of time

(Petitioner's and Respondent's Exhibit A-1—
Continued)

such as patents, leaseholds, estates pur autre vie, or remainder interests the value shown under the heading "Value under option" must be the adjusted value, i. e., the value as of the date of death with an adjustment reflecting any difference in its value as of the later date not due to mere lapse of time. Under the heading, "Value at date of death" the amount of the principal and the amount of income accrued to the date of death must be entered separately.

For examples illustrating the entry of the information required under the schedules, see the reverse of sheets IV and V. While the examples there shown pertain to Schedules A and B, the information required under the other schedules should be set forth in a similar manner.

All the information indicated on this form must be supplied. Statements as to distributions, sales, exchanges, and other dispositions of the property within the 1-year period after the decedent's death must be supported by evidence. If the court issues an order of distribution during that period a certified copy of the order must be submitted as part of the evidence. The Commissioner may require the submission of such additional evidence as is deemed necessary.

Penalties

For penalties for failure to file return when due, keep records, and supply information, or for the preparation or presentation or the aiding or assist-

(Petitioner's and Respondent's Exhibit A-1—
Continued)

ing in the preparation or presentation of a false or fraudulent return, affidavit, claim, or document, see articles 90 to 94, inclusive, of Regulations 80.

General Information

Decedent's name—Adolph J. Koch

Date of death—June 29, 1939

Residence (domicile) at date of death—San Jose, California

Year in which last domicile was established—1872

Citizenship at date of death—United States

Place of death—San Jose, California

Cause of death and length of last illness—extra peritonial hemorrhage due to rupture of left hypogastric artery, last illness 24 hrs.

Names and addresses of decedent's physicians:

John H. Shepard, Medico-Dental Bldg., San Jose, Calif.

Arthur T. McGinty, 279 S. Thrid St., San Jose, Calif.

Dr. Porter—2 yrs. before dth.

If decedent was confined in a hospital during his last illness, give name and address of hospital—San Jose Hospital, San Jose, California

[Written in pencil]: 84 yrs. 3 mos.

Date of birth—March 24, 1855

Place of birth—Bavaria, Germany

Business or occupation—Retired

Business address—

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Married, single, separated, widowed, or divorced
at date of death—widowed

Number of children—One surviving

Heirs, Next of Kin, Devisees, and Legatees

(If more than five, only the names of the five prin-
cipal ones are required)

Name	Relationship	Address
George A. Koch	Son	144 Funston Ave., San Francisco, Calif.
Ralph J. Swickard	Grandson	San Jose, California

Did decedent die testate?—Yes

Were letters testamentary or of administration
granted for this estate?—Letters Testamentary

Date granted—August 2, 1939

Name and location of court—Superior Court of
the State of California, in and for the County of
Santa Clara, at San Jose, California

To whom granted? (Explain if different from
the person or persons filing return.)—George A.
Koch.

Did the decedent at date of death own property
in any State or country other than that of his last
domicile?—No

Place of ancillary probate proceedings, if any—

Name and address of ancillary administrator or
executor—

Did the decedent at the time of his death have a
safe deposit box held either alone or in the joint
names of himself and another?—Yes

(Petitioner's and Respondent's Exhibit A-1—
Continued)

If so, state location—First National Bank of San Jose, San Jose, California

If held jointly, give the name of the joint depositor and his relationship to the decedent—George A. Koch, son

If the decedent had a safe deposit box at the time of his death indicate under what schedules in this return the contents are listed—Schedule C

If any of the contents of the safe deposit box are omitted from the schedules, explain why—None

Did the undersigned person or persons filing return make diligent and careful search for property of every kind left by the decedent?—Yes

Did the same undersigned make diligent and careful search for information as to any transfers of the value of \$5,000 or more made by the decedent during his lifetime without an adequate and full consideration in money or money's worth?—Yes

Name and address of attorney representing estate, if any—Faber L. Johnston, 1st Nat'l Bank Bldg., San Jose, California

Optional Valuation

Does the executor elect to have the property included in the gross estate of this decedent valued in accordance with the method authorized by subdivision (j) of section 302 of the Revenue Act of 1926, as added by section 202 of the Revenue Act of 1935? (Answer "Yes" or "No.")—No

(This option is available only at the time the

(Petitioner's and Respondent's Exhibit A-1—
Continued)

return is filed, and cannot thereafter be changed. Unless the answer to this question is "Yes", the tax must be computed in accordance with values as of the date of the decedent's death.)

Estate of Adolph J. Koch

GROSS ESTATE

Schedule A

REAL ESTATE

(See instructions on reverse of this sheet)

Did the decedent, at the time of his death, own any real estate in the United States? (Answer "Yes" or "No") No.

Item No.	Description	Subsequent val- uation date	Value under option	Value at date of death
[In pencil]: J. L. Harkris				
		\$		\$
None				

Total (also enter under the Re-
capitulation, Schedule O) \$ \$

(If more space is needed, insert additional sheets of same size)

Estate of Adolph J. Koch

Instructions for Schedule A
Real Estate

Real estate should be so described and identified that upon investigation by an Internal Revenue officer it may be readily located for inspection and valuation. For each parcel of real estate there

(Petitioner's and Respondent's Exhibit A-1—
Continued)

should be given the area and, if the parcel is improved, a short statement of the character of the improvements. For city or town property state street and number, ward, subdivision, block and lot, etc. For rural property state township, range, landmarks, etc.

If any item of real estate is subject to a mortgage, the unpaid balance of the mortgage should be shown under "Description." The full value of the property and not the equity must be extended in the value column. The amount of the mortgage should be deducted under Schedule L of this return.

Real property which the decedent has contracted to purchase should be listed in this schedule. The full value of the property and not the equity must be extended in the value column. The unpaid portion of the purchase price should be deducted under Schedule L of this return.

The value of dower, courtesy, or a statutory estate created in lieu thereof, is taxable, and no reduction on account thereof or on account of homestead or other exemptions, should be made in returning the value of the real estate.

The basis for the returned values should be stated. If based upon appraisal a copy of such appraisal should either be attached to the return or retained in your files subject to inspection.

For further instructions see articles 10 to 13, inclusive, Regulations No. 80.

(Petitioner's and Respondent's Exhibit A-1—
Continued)

EXAMPLES SHOWING USE OF SCHEDULE

Example where the optional valuation is not adopted;
date of death, December 1, 1935

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
1.	House and lot, 1921 William Street NW., Washington, D. C., (lot 6, square 481). Property under lease. Value based on appraisal, copy of which is attached			\$ 36,000.00
	Rent accrued but unpaid on Item 1			300.00
2.	House and lot, 304 Jefferson Street, Alexandria, Va. (lot 18, square 40). Property under lease. Value based on appraisal, copy of which is attached			16,000.00
	Rent accrued but unpaid on Item 2			133.33

Example where the optional valuation is adopted;
date of death, December 1, 1935

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
1.	House and lot, 1921 William Street NW., Washington, D. C., (lot 6, square 481). Property under lease. Values based on appraisal, copy of which is attached. Not disposed of within year following death	12/1/36	\$ 30,000.00	\$ 36,000.00
	Rent accrued but unpaid on Item 1	12/1/36	1,200.00	300.00
	Rent collected on Item 1	1/1/36	600.00	-----
	Rent collected on Item 1	7/1/36	1,800.00	-----
2.	House and lot, 304 Jefferson Street, Alexandria, Va., (lot 18,			

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Examples Showing Use of Schedule—(Continued)

Item No.	Description	Subsequent val- uation date	Value under option	Value at date of death
	square 40). Lease ex- pired June 30, 1936.			
	Values based on ap- praisal, copy of which is attached, Property exchanged for farm on August 1, 1936.....	8/1/36	14,000.00	16,000.00
	Rent accrued but un- paid on Item 2.....	8/1/36	133.00	.....
	Rent collected on Item 2	1/1/36	533.33	.....
	Rent collected on Item 2	4/1/36	400.00	.....

In this example, item 1, \$36,000 represents the value of the house and lot on December 1, 1935, the date of the decedent's death, and \$30,000 represents its value on December 1, 1936, 1 year after the decedent's death. It will be noted that the amount of \$300 entered in the column headed "Value at date of death" is the amount of rent accrued but unpaid under the lease at the date of the decedent's death, and that the amount of \$1,200 entered in the column headed "Value under option" is the amount of rent accrued but unpaid at the subsequent valuation date (December 1, 1936) as of which the real property is valued under the option. The amounts, \$600 and \$1,800, entered in the column headed "Value under option" represent rents collected (on January 1, 1936, and on July 1, 1936) between the date of decedent's

(Petitioner's and Respondent's Exhibit A-1—
Continued)

death and the subsequent valuation date (December 1, 1936) as of which the real property is valued under the option.

Schedule B

Stocks and Bonds

(See instructions on reverse of this sheet)

(1) Did the decedent, if a resident or citizen of the United States (or a resident, regardless of citizenship, if death occurred prior to the enactment of the Revenue Act of 1934) own any stocks or bonds, regardless of situs, at the time of his death? (Answer "Yes" or "No.")—Yes

(2) Did the decedent, if a nonresident alien of the United States (or a nonresident, regardless of citizenship, if death occurred prior to the enactment of the Revenue Act of 1934) own, at the time of his death, any stocks or bonds situated in the United States as explained in the instructions? (Answer "Yes" or "No.")—

Item No.	Description	Subsequent val- uation date	Value under option	Value at date of death
		.10 @ .15 - S.F. Ex. d/d		
1000 shares of Occi- dental Petroleum Corporation, Cert. #18610 for 500 shares and #18609 for 500 shares		\$	\$	100.00

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule B—(Continued)

Item No.	Description	Subsequent val- uation date	Value under option	Value at date at death
2	shs. Masonic Hall stock ? (Par. 10) Dec. turned it over to Helwig before d/d, and then turned back to San Jose Abstract Co. for dec. Worth \$15.00 per share.			
Total (also enter under the Recapitulation, Schedule O)				\$ 100.00

(If more space is needed, insert additional sheets of same size)

Estate of Adolph J. Koch

Instructions for Schedule B

Stocks and Bonds

Description.—Description of stocks should indicate number of shares, whether common or preferred, issue, par value, price per share, exact name of corporation, and, if unlisted, the location of the principal business office and State in which incorporated and the date of incorporation. If listed, state principal exchange upon which sold. Description of bonds should include quantity and denomination, name of obligor, kind of bond, date of maturity, interest rate, and interest-due dates. State the exchange upon which listed, or if unlisted, the principal business office of the company.

Valuation.—Listed stocks and bonds should be valued at the mean between the highest and lowest selling prices on the valuation date, or if there were no sales on such date, then at the mean between the highest and lowest sales on the nearest

(Petitioner's and Respondent's Exhibit A-1—
Continued)

date thereto, if within a reasonable period. If the valuation date is on a Sunday or a holiday, the quotations of the nearest previous day should be used. If listed on several exchanges, quotations of the principal exchange should be employed. Unlisted securities which are dealt in actively by brokers or have an active market should be valued at the sale price as of the valuation date or the nearest date thereto, if within a reasonable period either before or after such date. Only sales in the normal course of business should be employed. If sale prices are not available and the stock is quoted on a bid and asked basis, the mean of the bid and asked prices on the valuation date, or the nearest date thereto, where not quoted as of such date, should be taken.

Inactive stock and stock in close corporations should be valued on the basis of the company's net worth, earning and dividend paying capacity, and all relevant factors bearing on the value of the stock. Complete financial and other data upon which the estate bases its valuation should be submitted in duplicate with the return, including balance sheets (particularly the one nearest to the valuation date), and statements of the net earnings or operating results and dividends paid for each of the 5 years immediately preceding the valuation date.

Securities returned as of no value, nominal value or obsolete, should be listed last, and the address

(Petitioner's and Respondent's Exhibit A-1—
Continued)

of the company and the State and date of the incorporation should be stated. Correspondence or statements used as the basis for return at no value should be retained for inspection.

Interest and dividends.—Interest and dividends must be shown separately as explained in the general instructions under "Execution of Return."

Estate of nonresident alien.—In the case of an estate of a nonresident alien of the United States (or an estate of a nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) stocks or bonds of either of the following two classes must be included hereunder: (1) Stocks or bonds of corporations organized in the United States, regardless of the situs of the certificates; and (2) stocks or bonds of corporations, whether domestic or foreign, if the stock certificates were situated in the United States at the time of the decedent's death. For example, a share of stock of a corporation organized in the United States must be included for tax in the estate of a nonresident alien even though the stock certificate was in England; and a share of stock of a corporation organized in England must be included in his estate if the stock certificate was in the United States at the time of death.

Further instructions.—For further instructions, see articles 11, 12, 13, and 50 of Regulations No. 80, and the regulations issued pursuant to the optional valuation provision.

(Petitioner's and Respondent's Exhibit A-1—
Continued)

EXAMPLE SHOWING USE OF SCHEDULE

Example where the optional valuation is not adopted;
date of death, Decemebr 1, 1935

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
1.	Sixty \$1,000 Pennsylvania Railroad Co. first mortgage 4-percent, 20-year bonds, due 1945. Interest payable January, April, July, and October. New York Exchange at 100.....		\$ 60,000	
	Interest accrued on Item 1		400	
2.	Five hundred shares Public Service Corporation, common, par \$100, at 110, ex dividend, New York Exchange			55,000
	Dividend on Item 2 of \$2 per share paid on December 5, 1935, to holders of record on November 20, 1935			1,000
3.	One hundred shares Brown Investment Corporation, Red Bank, N. J., unlisted, common, par \$100, at 1500, per Exhibit A. Incorporated in New Jersey			150,000

Example where the optional valuation is adopted;
date of death, December 1, 1935.

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
1.	Sixty \$1,000 Pennsylvania Railroad Co. first mortgage 4-percent, 20-year bonds, due 1945. Interest payable January, April, July, and October. New York Exchange. At 100 on date of death. At 99 on June 1, 1936, date of sale by executor....	6/1/36	\$ 59,400	\$ 60,000

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Examples Showing Use of Schedule—(Continued)

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
	Interest accrued on			
	Item 1	6/1/36	400	400
	Interest collected on			
	Item 1	1/1/36	600	.....
	Interest collected on			
	Item 1	4/1/36	600	.....
2.	Five hundred shares Public Service Corporation, common, par \$100. New York Exchange. At 110, ex dividend, on date of death. At 74 on December 1, 1936. Not disposed of within year following death..	12/1/36	37,000	55,000
	Dividend on Item 2 of \$2 per share paid on December 5, 1935, to holders of record on November 20, 1935.....	12/5/35	1,000	1,000
	Dividend on Item 2 of \$1 per share paid on March 5, 1936. No further dividends declared	3/5/36	500	.....
3.	One hundred shares Brown Investment Corporation, Red Bank, N. J., unlisted, common, par \$100. Incorporated in New Jersey. At 1500 on date of death, per Exhibit A. At 750 on December 1, 1936, per			

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Examples Showing Use of Schedule—(Continued)

Item No.	Description	Subsequent valuation date	Value under option	Value at date at death
	Exhibit B. Not disposed of within year following death	12/1/36	75,000	150,000
	Dividend on Item 3 of \$750 cash per share paid August 10, 1936	8/10/36	75,000	.....

Schedule C

MORTGAGES, NOTES, AND CASH

(See instructions on reverse of this sheet)

Did the decedent, at the time of his death, own any mortgages, notes, or cash? (Answer "Yes" or "No") Yes.

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
1. Cash		\$	\$ 513.52	
	Promissory note for \$42500 dated Nov. 15, 1936 executed by George B. Campbell and Annie Campbell, to A. J. Koch, payable 3 years after date with interest at 5% payable monthly, Int. paid to June 15, 1939. Secured by deed of trust dated Nov. 15, 1936 executed by George B. Campbell and Annie E. Campbell his wife, to San Jose Abstract & Title Insurance Co. as trustee, and A. J. Koch, beneficiary, recorded Nov. 16, 1936 in Vol. 799 of Official Records, page 50, Santa Clara County Records		42,500.00	
	Interest to date of death		88.52	
2.	Promissory note for \$15000.00 dated May 1, 1935, executed by Auzerais Estate Company, a corporation, to A. J. Koch, payable 3 years after date with interest at 6% per annum payable monthly. Int. paid to June 1, 1939. Also promissory note for \$1000 dated May 7, 1935 executed by Auzerais Estate Company, a corpora-			

(Petitioner's and Respondent's Exhibit A-1—
 Continued)
 Schedule C—(Continued)

Item No.	Description	Subsequent val- uation date	Value under option	Value at date of death
	tion to A. J. Koch, payable Apr. 30, 1938 with interest at 6% per annum payable monthly. Int. paid to June 1, 1939. Both secured by deed of trust dated May 1, 1935 executed by Auzerais Estate Company, a corporation, to San Jose Abstract & Title Insurance Co. as trustee and A. J. Koch beneficiary, recorded May 4, 1935 in Vol. 730 of Official Records, page 172, Santa Clara County Records			16,000.00
	Interest to date of death			77.33
3.	Promissory note for \$10000.00 dated Sept. 1, 1936 executed by Foundation Holding Corporation, a corporation, to A. J. Koch payable 3 years after date, with interest at 5% per annum payable monthly. Int. paid to June 1, 1939. Secured by deed of trust dated Sept. 1, 1936 executed by Foundation Holding Corp., a corporation, to San Jose Abstract & Title Insurance Co. as trustee, A. J. Koch beneficiary, recorded Sept. 2, 1936 in Vol. 789 of Official Records, page 125, Santa Clara County Records.....			10,000.00
	Interest to date of death			40.28
4.	Promissory note for \$27000.00 dated Nov. 10, 1935 executed by Fred Hanchett, Vivian Hanchett, J. R. Conner and Sue W. Conner to A. J. Koch, payable 5 years after date with interest at 6% per annum payable monthly. Int. paid to June 10, 1939.			
	Total (also enter under the Re- capitulation, Schedule O)	\$ Ford	\$ 69,219.65	

(If more space is needed, insert additional sheets of same size)

Estate of Adolph J. Koch

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule C—(Continued)

Mortgages, Notes and Cash

Item No.	Description	Subsequent val- uation date	Value under option	Value at date of death
			Ford.	\$ 69,219.65
	Secured by deed of trust dated Nov. 10, 1935 executed by Fred Hanchett and Vivian Han- chett, his wife, and J. R. Conner and Sue W. Conner, his wife, to San Jose Abstract & Title Insurance Co., trustee, A. J. Koch as benefi- ciary, recorded Nov. 20, 1935 in Vol. 747 of Of- ficial Records, page 476, Santa Clara County Records			27,000.00
	Interest to date of death			85.51
Item No.	Description	Subsequent val- uation date	Value under option	Value at date of death
5.	Promissory note for \$2500.00 dated Nov. 28, 1938, executed by Paul S. Williams and Phyllis M. Williams to Adolph J. Koch, payable on or before one year, interest at 5% per annum, pay- able monthly. Int. paid to June 28, 1939. Se- cured by deed of trust executed by Paul S. Wil- liams and Phyllis M. Williams, his wife, to San Jose Abstract & Title Insurance Co., as trustee, and Adolph J. Koch, beieficiary, recorded Nov. 28, 1938 in Vol. 903 of Official Records, page 443, Santa Clara County Records			2,500.00
	Interest to date of death.....			.70

- Promissory note for \$6000.00 dated Apr. 3,
1935 executed by John H. Drew and Charlotte
F. Drew to A. J. Koch, payable on or before 2
years after date, interest at 6% per annum pay-
able monthly, \$4000 paid on prineipal, balance
unpaid \$2000, interest paid to June 3, 1939. Se-
cured by deed of trust dated Apr. 3, 1935 ex-
ecuted by John H. Drew and Charlotte F.
Drew, his wife, to San Jose Abstract & Title In-
surance Co. as trustee, A. J. Koch as beneficiary

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule C—(Continued)

recorded Apr. 4, 1935 in Vol. 724 of Official Records, page 324, Santa Clara County Records	2,000.00
Interest to date of death.....	9.00
7. Promissory note for \$15000.00 dated Dec. 31, 1938 executed by Nelty LeFranc Horney and Celine H. Delmas to A. J. Koch, payable 3 years after date, interest at 6% per annum payable monthly. Int. paid to May 1, 1939. Secured by deed of trust dated Dec. 31, 1938 executed by Nelty LeFranc Horney and Celine H. Delmas to San Jose Abstract & Title Insurance Co. as trustee, and A. J. Koch as beneficiary, recorded Jan. 20, 1939 in Vol. 911 of Official Records, page 384, Santa Clara County Records.....	15,000.00
Interest to date of death.....	147.50
8. Promissory note for \$40.00 dated 5/16/38 ex- ecuted by J. G. Roberts to A. J. Koch, payable on Aug. 16, 1938, Unsecured	0.00
[In pencil]: Insolvent not collectible. Interest to date of death	
	Total
	115,962.36

Estate of Adolph J. Koch

Instructions for Schedule C

Mortgages, Notes, and Cash

The classes of property under this schedule should be listed separately in the order given.

Mortgages.—State (1) face value and unpaid balance, (2) date of mortgage, (3) date of maturity, (4) name of maker, (5) property mortgaged, and (6) interest dates and rate of interest. For example: Bond and mortgage for \$9,000, unpaid balance \$6,000; dated January 1, 1935, John Doe

(Petitioner's and Respondent's Exhibit A-1—
Continued)

to Richard Roe; premises 22 Clinton Street, Newark, N. J., due January 1, 1938; interest payable at 6 percent per annum January 1 and July 1. Reference is made to article 13 (5) of Regulations No. 80.

Notes, promissory.—Show similar data.

Contract by the decedent to sell land.—Show name of vendee, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal and interest rate.

Cash in possession.—List separately from bank deposits.

Cash in bank.—State bank and address, amount in each bank, serial number and nature of account, showing whether checking, savings, time deposit, etc. If statements are obtained from banks they should be retained for inspection by an Internal Revenue agent. Reference is made to article 13 (6) of Regulations No. 80.

Estate of nonresident alien.—In the case of an estate of a nonresident alien of the United States (or a nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) mortgages or notes owned by the decedent at the time of death must be included hereunder if the mortgagors or makers were residents of the United States or, regardless of the residence of the mortgagors or makers, if the mortgage certificates or notes were physically in the

(Petitioner's and Respondent's Exhibit A-1—
Continued)

United States at the time of death. If such decedent was engaged in business in the United States at the time of his death, accounts in banks situated in the United States must be included hereunder. Report fully all facts concerning any account not included. Reference is made to article 50 of Regulations No. 80.

Schedule D

INSURANCE

(See instructions on reverse of this sheet)

(1) Was any insurance on life of decedent receivable by his estate? (Answer "Yes" or "No") No.

(2) Was any insurance on life of decedent receivable by beneficiaries other than the estate? (Answer "Yes" or "No") No.

Item No.	Description	Subsequent val- uation date	Value under option	Value at date of death
			\$	\$
	No life insurance but Shriners benefit fund paid \$500 to son George A. Koch and \$500 to grandson Ralph J. Swickard			
	Total		\$.....	\$.....
	Less amount receivable by bene- ficiaries, other than the estate, not in excess of \$40,000.....		\$.....	\$.....
	Total Included (also enter under the Recapitulation, Schedule O)		\$.....	\$.....

(If more space is needed, insert additional sheets of same size)

Estate of Adolph J. Koch

(Petitioner's and Respondent's Exhibit A-1—
Continued)Instructions for Schedule D
Insurance

Include in the gross estate all insurance on the life of the decedent as follows: (a) The full amount of insurance receivable by or for the benefit of the estate; (b) the amount that exceeds \$40,000 of the aggregate insurance receivable by beneficiaries other than the estate where the decedent possessed any of the legal incidents of ownership. Legal incidents of ownership in the policy include, for example: The right of the insured or his estate to its economic benefits, the power to change the beneficiary, to surrender or cancel the policy, to assign it, to revoke an assignment, to pledge it for a loan, or to obtain from the insurer a loan against the surrender value of the policy, etc.

Insurance payable to the estate should be listed first, and immediately following should be listed all insurance payable to beneficiaries other than the estate whether the executor believes that the decedent possessed any of the legal incidents of ownership or not. If the executor believes that the decedent did not possess any of the legal incidents of ownership the amount receivable should be disclosed under the second column headed "Description", and a photostatic copy of the policy should be filed with the return. Deduction may be taken at the bottom of the schedule equal to the amount of the proceeds of insurance receivable

(Petitioner's and Respondent's Exhibit A-1—
Continued)

by beneficiaries other than the estate and shown in the fourth or fifth columns, but not exceeding \$40,000. In describing the policy, state name of company, number of policy, and name of beneficiary.

The "Life insurance statement", Form 712, for each policy listed hereunder should be obtained from the insurance company by the executor and filed with the return.

For further instructions see articles 25 to 28, inclusive, Regulations No. 80.

Estate of nonresident alien.—In the case of an estate of a nonresident alien of the United States (or an estate of a nonresident, regardless of citizenship, if the decedent died prior to the enactment of the Revenue Act of 1934) the proceeds of insurance on his life need not be included. Reference is made to article 50 of Regulations No. 80.

Schedule E

JOINTLY OWNED PROPERTY

(See instructions on reverse of this sheet)

(1) Did the decedent, at the time of his death, own any property as a joint tenant or as a tenant by the entirety, with right of survivorship? (Answer "Yes" or "No") Yes.

(2) If so, state the name and address of each surviving

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule E—(Continued)

cotenant. George A. Koch, 144 Funston Ave., San Francisco, Calif.

Item No.	Description	Subsequent val- uation date	Value under option	Value at date of death
	Joint bank account [Inserted in \$ pencil: (Commercial)] in name of A. J. Koch and George A. Koch in The First National Bank of San Jose, California		\$	
				\$ 26,543.03

Total (also enter under the
Recapitulation, Schedule O)..... \$ 26,543.03

(If more space is needed, insert additional sheets of same size)

Estate of Adolph J. Koch

Instructions for Schedule E
Jointly Owned Property

All property of whatever kind or character, whether real estate, personal property, bank accounts, etc., in which the decedent held at the time of his death an interest either as a joint tenant or as a tenant by the entirety, with right of survivorship, must be disclosed under this schedule.

The full value of the property must be included in the gross estate, unless it can be shown that a part of the property originally belonged to the other tenant or tenants and was never received or acquired by the other tenant or tenants from the decedent for less than an adequate and full consideration in money or money's worth. Where it is shown that the property or any part thereof, or any part of the consideration with which the property was purchased, was acquired by the other tenant or tenants from the decedent for

(Petitioner's and Respondent's Exhibit A-1—
Continued)

less than an adequate and full consideration in money or money's worth, there should be omitted only so much of the value of the property as is proportionate to the consideration furnished by such other tenant or tenants. For the purposes of the estate tax, a relinquishment or promised relinquishment of dower, courtesy, or of a statutory estate created in lieu of dower or courtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.

Where the property was acquired by gift, bequest, devise, or inheritance by the decedent and spouse as tenants by the entirety, then only one-half of the value of the property should be included. Where the property was acquired by the decedent and another person or persons by gift, bequest, devise, or inheritance as joint tenants, and their interests are not otherwise specified or fixed by law, then there should be included only such fractional part of the value of the property as is obtained by dividing the full value of the property by the number of joint tenants.

If the executor contends that less than the value of the entire property is includable in the gross estate for purposes of the tax, the burden is upon him to show his right to include such lesser value, and in such case he should make proof of the extent, origin, and nature of the decedent's interest and the interest of the decedent's cotenant or cotenants.

In every instance a statement under the column headed "Description" must disclose whether the whole or only a part of the property is included in

(Petitioner's and Respondent's Exhibit A-1—
Continued)

the gross estate. If only a part of the property is included in the gross estate, the fair market value of the whole must be shown under "Description."

Property in which the decedent held an interest as a tenant in common should not be listed under this schedule, but the value of his interest therein, should be returned under Schedule A, if real estate, or if personal property, under such other appropriate schedule. The decedent's interest in a partnership should not be included under this schedule, but should be shown under Schedule F, "Other miscellaneous property."

For further instructions, see articles 22 and 23 of Regulations No. 80.

Schedule F

OTHER MISCELLANEOUS PROPERTY

(See instructions on reverse of this sheet)

(1) Did the decedent at the time of his death, own any interest in a copartnership or unincorporated business? (Answer "Yes" or "No") No.

(2) Did the decedent, at the time of his death, own any miscellaneous property not returnable under any other schedule? (Answer "Yes" or "No") No.

Item No.	Description	Subsequent val- uation date	Value under option	Value at date of death
			\$	\$
	None			

Total (also enter under the
Recapitulation, Schedule O) \$

(If more space is needed, insert additional sheets of same size)

Estate of Adolph J. Koch

(Petitioner's and Respondent's Exhibit A-1—
Continued)Instructions for Schedule F
Other Miscellaneous Property

Under this schedule list all items of the gross estate not returnable under any other schedule, such as the following. Debts due the decedent; interests in business; claims; rights; royalties; pensions; leaseholds; judgments; share in trust funds; household goods and personal effects, including wearing apparel; farm products and growing crops; livestock; farm machinery; automobile; etc.

When an interest in a copartnership or unincorporated business is returned, submit in duplicate statements of assets and liabilities as of the valuation date and for the 5 years preceding, and statements of the net earnings for the same 5 years. Good will must be accounted for. In general, the same information should be furnished and the same methods followed as in valuing close corporations.

In case of an interest in a trust fund, duplicate copies of the trust instrument should be submitted.

In describing an annuity, the name and address of the grantor of the annuity should be given, or if payable out of a trust or other fund, such a description as will fully identify it. If payable for a term of years, the duration of the term and the date on which it began should be given, and if payable for the life of a person other than the decedent, the date of birth of such person should be stated.

For further instructions, see articles 11, 12, 13, and 50 of Regulations No. 80.

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule G

Transfers During Decedent's Life
(See Instructions on reverse of this sheet)

(1) Did the decedent make any transfer described in the first paragraph (including the six subparagraphs) of the instructions on the reverse of this sheet? (Answer "Yes" or "No.") No.

(2) Did the decedent, within 2 years immediately preceding his death, make any transfer of a material part of his property without an adequate and full consideration in money or money's worth? (Answer "Yes" or "No.") Yes.

(3) Did the decedent, at any time, make a transfer of an amount of \$5,000 or more without an adequate and full consideration in money or money's worth, but not believed to be includible in the gross estate as indicated in the first paragraph (including the six subparagraphs) of the instructions for this schedule? (Answer "Yes" or "No.") Yes.

(4) If the answer to question (3) is "Yes" state date, amount of value, character of transfer, and motive which actuated the decedent in making the transfer.

.....

.....

(5) Were there in existence at the time of the decedent's death any trusts created by him during his lifetime? (Answer "Yes" or "No.") Yes.

(Petitioner's and Respondent's Exhibit A-1—
 Continued)
 Schedule G—(Continued)

Item No.	Description	Subsequent valuation date	Value under option	Value at date of death
			\$	\$
(Additional pages are attached describing the transferred property and the motive there- for.)				
[In pencil]: Taxed by state for inherit tax purposes.				
Total (also enter under the Recapitulation, Schedule O) \$				

(If more space is needed, insert additional sheets of same size)

Estate of Adolph J. Koch.

Item No.

Donee's name and address: Ralph J. Swickard, San Jose,
 California

Motive: A gift of sufficient amount so that the income
 therefrom will be enough to cover his future college
 expenses.

Description of Gifts: Dated December 20, 1938

Transferred under Trust agreement with Geo. A. Koch,
 Trustee

1. 5 - \$1000 bonds of Consolidated Edison Co. (NY) 3½ deb. due 1956.....	\$ 5268.75
2. 10 \$1000 bonds of Pac. Gas & Elec. Co. 3½ deb. due 1966	10643.50
3. 10 \$1000 bonds of American Tel. & Tel. Co. 3¼ deb. due 1961	10562.50
4. \$10000.00 savings acct. deposit in First Nat'l Bank of San Jose	10000.00
5. \$5000.00 Independent Bldg. & Loan cert. San Jose, Cal.	5000.00
6. 100 sh. com. stock Am. Tel. & Tel. Co. Cert. QG 84719	14625.00
7. 100 sh. com. stock Byron Jackson Co. Cert. B 25813	1650.00

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Item No.	Schedule G—(Continued)	
8.	100 sh. com. stock Byron Jackson Co. Cert. 9759	1650.00
9.	100 sh. com. stock Byron Jackson Co. Cert. B 36187	1650.00
10.	100 sh. 1st Pfd. Pac. Gas & Elec. Co. Cert. C6192 5½%	2812.50
11.	100 sh. 1st Pfd. Pac. Gas & Elec. Co. Cert. C6193 5½%	2812.50
12.	100 sh. 1st Pfd. Pac. Gas & Elec. Co. Cert. 25690 6%	3143.75
13.	100 sh. 1st Pfd. Pac. Gas & Elec. Co. Cert. 25691 6%	3143.75
14.	100 sh. 1st Pfd. Pac. Gas & Elec. Co. Cert. 25692 6%	3143.75
		—————
		\$ 76106.00

Donee's name and address: George A. Koch, 144 Funston Ave., San Francisco, Calif.

Motive: A Christmas remembrance and to equalize the gift made to grandson Ralph Swickard.

Description of Gifts. Dated December 20, 1938

15.	5 \$1000 bonds of Public Service of Northern Ill. 1st 3½, 1968	\$ 5268.75
16.	10 1000 bonds of Pac. Gas. & Elec. Co., 3¾% Series II, 1961	10950.00
17.	10 \$1000 bonds of Am. Tel. & Tel. Co., 3¼ Deb. due 1966	10562.50
18.	\$10000 savings acct. deposit in 1st Nat'l Bank of San Jose, Cal.	10000.00
19.	\$5000.00 Independent Bldg.-Loan Cert. of San Jose, Calif.	5000.00
20.	100 sh. common stock Am. Tel. & Tel. Co., Cert. QG41677	14625.00
21.	100 sh. common stock Byron Jackson Co., Cert. 9760	1650.00
22.	100 sh. common stock Byron Jackson Co., Cert. 9761	1650.00
23.	100 sh. common stock Byron Jackson Co., Cert. 9762	1650.00
24.	100 sh. 1st Pfd. 5½% Pac. Gas. & Elec. Co.	

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Item No.	Schedule G—(Continued)	
	Cert. C6194	2812.50
25.	100 sh. 1st Pfd. 5½% Pac. Gas & Elec. Co. Cert. C6196	2812.50
26.	100 sh. 1st Pfd. 6% Pac. Gas & Elec. Co. Cert. C 25693	3143.75
27.	100 sh. 1st Pfd. 6% Pac. Gas & Elec. Co. Cert. C 36964	3143.75
28.	100 sh. 1st Pfd. 6% Pac. Gas & Elec. Co. Cert. C 36965	3143.75

		\$ 76412.50

Estate of Adolph J. Koch

Donee's name and address: George A. Koch, 144 Funston Ave. San Francisco, Calif.

Motive: To equalize the gifts to my grandson Ralph Swickard.

Description of gifts and dates:

29.	Jan. 3, 1939—Cash	\$ 4000.00
30.	Jan. 4, 1939—Cash [In pencil]: \$500. Bldg. & L. cert.	10000.00
31.	Jan. 15, 1939—10 shs. San Jose First National Bank ½ [In pencil] S I T 2650	1500.00
32.	May, 1939—An undivided one-half interest in real estate (hereinafter particularly described)	9000.00

		\$ 24500.00

Donee's name and address: Ralph J. Swickard, San Jose, Calif.

Motive: A gift of sufficient amount to establish him in business when through school.

Description of gifts and dates:

33.	Jan. 3, 1939—Cash — [In pencil]: — \$500.— S I T—besides this	\$ 4000.00
34.	Jan. 4, 1939—Cash	10000.00
35.	Jan. 15, 1939—1938 Dodge coupe	500.00
36.	May, 1939—An undivided one-half interest in real estate (hereinafter particularly described)	9000.00

		\$ 23500.00

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule G—(Continued)

All those certain lots, pieces or parcels of land situate, lying and being in the City of San Jose, County of Santa Clara, State of California, described as follows, viz:

1st. Commencing at a point on the Westerly line of Third Street 148.38 feet Northerly from the intersection of the Northerly line of San Carlos Street with the Westerly line of Third Street; running thence Northerly along said West line of Third Street 67.05 feet; thence Westerly and at right angles to Third Street 137.84 feet; thence Southerly and parallel with Third Street 67.05 feet; thence Easterly and parallel with San Carlos Street 137.84 feet to the place of beginning, being a part of Lot No. 5, Block No. 2, Range No. 3 South of the base line in said City of San Jose. \$6000.00

2nd. Beginning at a point on the Southwesterly line of Market Street, distant thereon Northwesterly 74 feet from the point of intersection of the Northwesterly line of Santa Clara Street with the Southwesterly line of Market Street, and extending thence Northwesterly along the Southwesterly line of Market Street 23 feet 1 4/5 inches, more or less, to the center line of a brick wall and being corner of lands of J. A. McKean and Nellie V. McKean; thence at right angles Southwesterly along the center line of said wall and the prolongation thereof 80 feet; thence at right angles Southeasterly 23 feet 1 4/5 inches more or less, to the center line of a brick

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule G—(Continued)

wall being in line of the Growers Bank, extending thence Northeasterly along the center line of said wall and parallel with Santa Clara Street 80 feet to the point of beginning. Together with all rights in a certain party wall agreement between the Masonic and Odd Fellows Hall Association and Hypolite Maffre, dated May 4, 1866 and recorded June 12, 1866 in Vol. B of Miscellaneous Records, page 531, Records of said County. \$7500.00

3rd. North half of Lot 8 and the South 10½ feet of Lot 5, in Block 2, Range 3 South of the base line of the City of San Jose, 4500.00

Estate of Adolph J. Koch

The foregoing transfers were not made in contemplation of death and Adolph J. Koch when he made the transfers in 1938 to Ralph J. Swickard did so under a trust agreement dated December 20, 1938 wherein George A. Koch is Trustee and he stated that he was making a gift of sufficient amount so that the income therefrom would be sufficient to cover his grandson's future college expenses, and in making the transfers in 1939 for Ralph J. Swickard he stated as his motive that he was making a gift of sufficient amount to establish his grandson in business when through school.

At the time of making the transfers to George A. Koch in 1938, Adolph J. Koch stated that he made them as a Christmas remembrance and to equalize

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule G—(Continued)

the gift made to his grandson Ralph J. Swickard, and when he made the transfers to George A. Koch in 1939 he stated as his motive that he made these transfers to equalize the gifts made to his grandson Ralph J. Swickard.

The decedent made gift tax returns for each years transfers and paid gift taxes thereon of \$7521.11 for 1938 and \$5100.00 for 1939.

[Longhand notation]: Ralph Swickard born 9/13/21 graduated from H. S. June, 1938. Ralph entered Stanford fall of 1938.

Instructions for Schedule G
Transfers During Decedent's Life

In accordance with the provisions of subdivisions (c) and (d) of section 302 of the Revenue Act of 1926, as amended, the following transfers made by the decedent during his life, by trust or otherwise, other than bona fide sales, for an adequate and full consideration in money or money's worth, are subject to the tax, and must be included in the gross estate under this schedule:

- (1) Transfers subsequent to the enactment of the Revenue Act of 1916 made in contemplation of death.
- (2) Transfers upon condition that title was not to pass from the decedent unless the beneficiary survived the decedent, or transfers intended to take effect in possession or enjoyment at or after the decedent's death.

(Petitioner's and Respondent's Exhibit A-1—
Continued)

(3) Transfers made after the enactment of the Revenue Act of 1916 whereby the use, possession, or income was retained by the decedent for his life, or for a period only ascertainable by reference to his death, or for a period of such duration as to evidence his intention to retain the enjoyment for his life, except where the decedent died prior to 5 p. m., eastern standard time, June 6, 1932, and the transfer was made prior to 10:30 p. m., eastern standard time, March 3, 1931.

(4) Transfers whereby the decedent retained, for his life, or for a period only ascertainable by reference to his death, or for a period of such duration as to evidence an intention that it should continue for his life, the right, either alone or in conjunction with any other person or persons, to designate who shall possess or enjoy the property or any of the income, as follows:

(a) In case the right permitted the determination of the ultimate disposition of the property, the transfer is taxable, whether it was made before or after the enactment of the Revenue Act of 1916.

(b) In case the right was limited to the disposition of the possession, enjoyment, or income during decedent's life, or during a period only ascertainable by reference to his death, or during a period of such extent as to evidence an intention that it should continue for his life, the transfer is taxable, if it was made after the enactment of the Revenue

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Act of 1916, except where the decedent died prior to 5 p.m., eastern standard time, June 6, 1932, and the transfer was made prior to 10:30 p.m., eastern standard time, March 3, 1931.

(5) Transfers of property, the enjoyment of which was subject at decedent's death to any change through the exercise, either by decedent alone or in conjunction with any person, of a power to alter, amend, revoke, or terminate.

(6) Transfers, made after the enactment of the Revenue Act of 1916, resulting from the relinquishment in contemplation of death of the decedent's power, exercisable either alone or in conjunction with any person, to alter, amend, revoke, or terminate.

Transfers included in the gross estate should be valued as of the date of the decedent's death, or, if the optional valuation is adopted, in accordance with subdivision (j) of section 302 of the Revenue Act of 1926, as added by section 202 of the Revenue Act of 1935. If only a portion of the property is so transferred as to come within the terms of the statute, only a corresponding proportion of the value of the property should be included in the value of the gross estate. If the transferee makes additions to the property, or betterments, the enhanced value of the property at the valuation date, due to such additions or betterments, should not be included. However, where only a portion of the value of the property is included, the value of the whole must be disclosed

(Petitioner's and Respondent's Exhibit A-1—
Continued)

under the column headed "Description", together with an explanation of the proportionate inclusion.

To constitute a bona fide sale for an adequate and full consideration in money or money's worth, it must have been made in good faith, and the price must have been an adequate and full equivalent, and reducible to a money value. If the price was less than an adequate and full equivalent, only the excess of the fair market value of the property, as of the valuation date, over the price received by the decedent should be included in the gross estate. For the purpose of the estate tax the relinquishment or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, is not to any extent a consideration in money or money's worth.

All transfers made by the decedent during his life of an amount of \$5,000 or more except bona fide sales for an adequate and full consideration in money or money's worth, must be disclosed in the return, whether the executor regards such transfers as subject to the tax or not. If the executor believes that such a transfer is not subject to the tax a statement of the pertinent facts should be made.

In case a transfer, by trust or otherwise, was made by a written instrument, duplicate copies thereof must be filed with the return. If of public record, one of the copies should be certified; if not of rec-

(Petitioner's and Respondent's Exhibit A-1—
Continued)

ord, one copy should be verified. If the decedent was a non-resident, only one copy need be filed, certified or verified, as the case may be.

The name of the transferee, date and form of transfer, and a complete description of the property should be set forth in this schedule. Rents and other income must be included as explained under "Execution of Return" in the general instructions.

For further instructions, see articles 15 to 21, inclusive, of Regulations No. 80.

Nonresident alien.—If the decedent was a non-resident alien (or a nonresident, regardless of citizenship, if death occurred prior to the enactment of the Revenue Act of 1934) the transfer must be included if the property was situated in the United States, either at the date of the decedent's death, or at the date of the transfer. Reference is made to article 50 of Regulations No. 80.

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule H

POWERS OF APPOINTMENT

(See instructions on reverse of this sheet)

(1) Did the decedent, at any time, by will or otherwise, transfer property by the exercise of a general power of appointment? (Answer "Yes" or "No") No.

(2) Did the decedent, at any time, by will or otherwise, exercise a limited power of appointment? (Answer "Yes" or "No.") No.

Item No.	Description	Subsequent val- uation date	Value under option	Value at date of death
	None		\$	\$
	Total (also enter under the Re- capitulation, Schedule O)	\$.....	\$.....	

(If more space is needed, insert additional sheets of same size)

Estate of Adolph J. Koch

Instructions for Schedule H

Powers of Appointment

In accordance with subdivision (f) of section 302 of the Revenue Act of 1926, as amended, property passing under a general power of appointment must be included in the gross estate under this schedule if exercised by the decedent (A) by will, or (B) by deed resulting in any of the transfers described in subparagraphs (1), (2), (3) and (4) of the first paragraph of the instructions for Schedule G; except in case of a bona fide sale for an adequate and full consideration in money or money's worth, or

(Petitioner's and Respondent's Exhibit A-1—
Continued)

where the decedent died prior to the enactment of the Revenue Act of 1918.

If the power is exercised for a consideration in money or money's worth, but is not a bona fide sale for an adequate and full consideration in money or money's worth, there should be included in the gross estate only the excess of the fair market value, at the applicable valuation date, of the property passing under the power over the value of the consideration received by the decedent.

Only property passing under a general power should be included. Ordinarily a general power is one to appoint to any person or persons in the discretion of the donee (or appointor) of the power. If the donee is required to appoint to a specified person or class of persons, the property should not be included in his gross estate.

Duplicate copies of the instrument granting the power and of the instrument by which the power was exercised, one of each to be certified or verified, must be filed with the return, unless the decedent was a nonresident, in which case only one copy of each instrument, certified or verified, is required. The copies must be filed even though it is contended that the power was a limited one and the property passing thereunder is not returned for tax.

For further instructions, see article 24, Regulations No. 80

(Petitioner's and Respondent's Exhibit A-1—Continued)

Schedule I

PROPERTY PREVIOUSLY TAXED

(See instructions on reverse of this sheet)

Name of donor or prior decedent.....

If a donor, show date of gift.....

Residence of donor at time of gift, or of prior decedent at time of death.....

Item No.	Description of property, subsequent val- uation dates, and description and amounts of mortgages or other liens paid	(Column A) Value under option	(Column B) Income under option	(Column C) Value at date of death	(Column D) Income accrued at date of death	(Column E) Finally deter- mined value in prior estate or gift
None						
Totals.....		\$.....	\$.....	\$.....	\$.....	\$.....

Total included in gross estate (total of columns A and B, or total of columns C and D, whichever is applicable) (also enter under Recapitulation, Schedule O)\$.....

(a) Gross deduction (total of applicable column A or C, or total of column E, whichever is lower)\$.....

(b) Total amount paid on mortgages or other liens deducted in prior estate or gift (enter detailed information at bottom of column headed "Description")\$.....

(c) Deduction for property previously taxed without proportionate reduction (item (a) minus (b) (also enter under Schedules P and Q, or Schedule R)\$.....

(If more space is needed, insert additional sheets of same size)

Estate of Adolph J. Koch.

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Instructions for Schedule I

Property Previously Taxed

Property includable in the gross estate that was received from a person who died within 5 years prior to the decedent's death or received by gift within 5 years prior to the decedent's death, or acquired in exchange therefor, with respect to which a deduction is authorized because an estate tax was paid by the prior estate or a gift tax was paid by the donor, should be returned in this schedule. The deduction for such property is authorized under the provisions of subdivision (a) (2) or subdivision (b) (2) of section 303 of the Revenue Act of 1926, as amended, in accordance with the following conditions and limitations, if the decedent died after 5 p. m., eastern standard time, June 6, 1932 (if death occurred prior to that time see article 41 of Regulation No. 80):

(a) Conditions:

(1) The property must have been received by the decedent by gift, bequest, devise, or inheritance from a prior decedent who died within 5 years of the decedent's death, or received by him as a gift within 5 years of his death.

(2) The property must be identified either as the same which the decedent so received or as property acquired in exchange therefor.

(3) The property so received must have formed a part of the gross estate situated in

(Petitioner's and Respondent's Exhibit A-1—
Continued)

the United States of such prior decedent, or have been included in the total amount of gifts of the donor.

(4) An estate tax by or on behalf of the estate of such prior decedent, or a gift tax by or on behalf of the donor, must have actually been paid (the mere filing of a return for such estate or donor not being sufficient).

(5) If the decedent died after 11:40 a. m., eastern standard time, May 10, 1934, no such deduction, in respect to the property or property exchanged therefor, must have been allowable in determining the value of the net estate of the prior decedent.

(b) Limitations:

(1) The deduction is limited to the aggregate value of the property as finally determined in the case of the prior decedent or donor, or to the aggregate value of such property included in the value of the gross estate of the present decedent, whichever is lower.

(2) The deduction, as limited in (1), is reduced by the total amount paid prior to the decedent's death on any mortgage or other lien on the property previously taxed, provided such mortgage or other lien was deducted in determining the estate tax of the prior decedent or the gift tax of the donor.

(3) The deduction is further reduced by the proportion of the total other deductions (al-

(Petitioner's and Respondent's Exhibit A-1—
Continued)

lowable under Schedules J, K, L, M, and N, and the specific exemption if applicable) which the amount otherwise deductible for property previously taxed bears to the amount of the gross estate.

The value of each item of property and any income thereon determined as of the applicable date or dates for inclusion in the value of the gross estate of the present decedent should be entered under the appropriate columns A, B, C, and D. It will be noted that column A is provided for the value under the option of the principal of each item of property and column B for any income thereon under the option, and that column C is provided for the value at the date of the decedent's death of the principal of each item of property, and column D is provided for any income thereon accrued to the date of death. The value finally determined in the prior estate or gift of the principal only of each item of property should be entered in column E.

The description should show the schedule and item number of the property as it appeared in the prior return. To make it clear that the schedule and item number relate to the prior return, they should be included in parentheses. If only a portion of an item in the prior estate is reflected in the present estate, that fact should be indicated and only a proportionate part of the value of the item

(Petitioner's and Respondent's Exhibit A-1—
Continued)

in the prior estate, as finally determined, should be entered in column E.

In accordance with the foregoing second limitation, any amount paid before the death of the present decedent in discharge of a mortgage or other lien on the property previously taxed, provided such mortgage or other lien was deducted in the prior case, should be shown last under the column headed "Description", together with an identification of the item of property involved and the item deducted in the prior case. The total of such amounts paid should be entered at item (b).

It will be noted that the "Total included in gross estate" (included in the value of the gross estate utilized for the computation of the tax) is the total of columns A and B if the optional valuation is adopted, or the total of columns C and D if the optional valuation is not adopted. However, if the optional valuation is adopted, both such totals should be entered under the appropriate columns under the Recapitulation, Schedule O.

The amount of the gross deduction for property previously taxed, in accordance with the first limitation, is entered at item (a). If the optional valuation is adopted, the amount of the gross deduction is the total of column A or the total of column E, whichever is the lower. If the optional valuation is not adopted, the amount of the gross deduction is the total of column C or the total of column E, whichever is the lower. The amount of item (b)

(Petitioner's and Respondent's Exhibit A-1—
Continued)

is subtracted from the amount of item (a); and the difference, which is entered as item (c), is the amount of the deduction as reduced in accordance with the second limitation. The amount of the net deduction for property previously taxed, as reduced by a certain proportion of the total other deductions in accordance with the third limitation, is finally computed under Schedule P, Q or R.

For further instructions, see article 41, 42, 43, and 53 of Regulations No. 80.

DEDUCTIONS
Schedule J

FUNERAL AND ADMINISTRATION EXPENSES
(See instructions on reverse side of this sheet)

Item No.	Funeral expenses	Amount
Amos O. Williams Co., San Jose, Calif.....	\$ 302.68	
Oak Hill Cemetery Association, San Jose, Calif.	35.50	
Western Granite Co., San Jose, Calif.....	10.00	
 Total (also enter under the Recapitulation, Schedule O)	\$ 348.08	 =====
 Amount of executors' commissions (also enter under the Recapitulation, Schedule O).....	\$ 1990.62	
[In pencil]: Pd. Feb. - 1940		
Estimated xxxxxxxx (Strike out words not ap- plicable)		 =====
 Amount of attorneys' fees (also enter under the Recapitulation, Schedule O)	\$ 1990.62	
[In pencil] : Pd. Feb., 1940		
Estimated xxxxxxxx (Strike out words not ap- plicable)		 =====

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule J—(Continued)

Item No.	Miscellaneous Administration expenses	Amount
Clerk—filing petition for probate	\$ 7.00	
" issuing letters and copies	2.25	
Publication of notice of probate	15.00	
" " to creditors	10.00	
Certified copies of letters	5.00	
" " orders	5.00	
Recording " "	5.00	
Certified copies of will and reports.....	3.20	
Appraiser's fees	117.00	
Miscellaneous expenses—estimated	10.00	
<hr/>		
Total (also enter under the Recapitulation, Schedule O)	\$ 179.45	<hr/> <hr/>

(If more space is needed, insert additional sheets of same size)

Estate of Adolph J. Koch

Instructions for Schedule J

Funeral and Administration Expenses

Funeral expenses and administration expenses should be itemized, giving names and addresses of persons to whom payable, and exact nature of the particular expense. An item may be entered for deduction though the exact amount is not known at the time, provided it is ascertainable with reasonable certainty, and will be paid. No deduction may be taken upon the basis of a vague or uncertain estimate. Preserve all vouchers and receipts for inspection by an Internal Revenue agent.

The executor or administrator, when filing the return, may deduct his commissions in such an

(Petitioner's and Respondent's Exhibit A-1—
Continued)

amount as has actually been paid or which at that time it is reasonably expected will be paid, but no deduction may be taken if no commissions are to be collected. In the case the amount of the commissions has not been fixed by decree of the proper court, the deduction will be allowed on the final audit of the return provided: (1) That the Commissioner is reasonably satisfied that the commissions claimed will be paid; (2) that the amount entered as a deduction is within the amount allowable by the laws of the jurisdiction wherein the estate is being administered; and (3) that it is in accordance with the usually accepted practice in said jurisdiction in estates of similar size and character. If the commissions claimed have not been paid at the time of the final audit of the return, the amount deducted must be supported by an affidavit of the executor stating that such amount has been agreed upon and will be paid.

A bequest or devise to the executor in lieu of commissions is not deductible. If, however, the decedent fixed by his will the compensation payable to the executor for services to be rendered in the administration of the estate, deduction may be taken to the extent that the amount so fixed does not exceed the compensation allowable by the local law or practice.

Amounts paid as trustees' commissions do not constitute expenses of administration and are not

(Petitioner's and Respondent's Exhibit A-1—
Continued)

deductible, whether received by the executor acting in the capacity of a trustee or by a separate trustee as such.

When filing the return there may be deducted such an amount of attorney's fees as has actually been paid or which at that time it is reasonably expected will be paid. If on the final audit of the return the fees claimed have not been awarded by the proper court and paid, the deduction will be allowed, provided the Commissioner is reasonably satisfied that the amount claimed will be paid and that it does not exceed a reasonable remuneration for the services rendered, taking into account the size and character of the estate and the local law and practice. If the fees claimed have not been paid at the time of the final audit of the return, the amount deducted must be supported by an affidavit of the executor or the attorney stating that such amount has been agreed upon and will be paid.

Attorney's fees incident to litigation instituted by the beneficiaries as to their respective interests do not constitute a proper deduction, inasmuch as expenses of this character are properly charged against the beneficiaries personally and are not administration expenses as contemplated by the statute.

Executors and attorneys should note that executors' commissions and attorneys' fees constitute taxable income and that the amounts received or re-

(Petitioner's and Respondent's Exhibit A-1—
Continued)

ceivable by them as such compensation are cross-referenced for income-tax purposes.

Estate, legacy, succession, and inheritance taxes, and taxes on income received after death, are not deductible. Deduction for property taxes is limited to such taxes as accrued prior to the decedent's death. Credit to a limited extent may, under "Computation of Tax", sheet XX be claimed for estate, legacy, succession, inheritance, and gift taxes.

For further instructions, see articles 29 to 35, inclusive, and article 52 of Regulations No. 80.

Schedule K

DEBTS OF DECEDENT

(See instructions on reverse of this sheet)

Item No.	Creditor and nature of claim	Amount
1.	San Jose Ambulance Co. [In pencil] not legally enforceable obligation	\$ 5.00
2.	Mrs. Compton—(nurse) San Jose Calif.— [In pencil] : housekeeper for dec. Davis	500.00
3.	E. Vain — (nurse) San Jose Calif.....	5.50
4.	M. Le Fevre—(nurse) " " "	5.50
5.	San Jose Hospital " " "	11.78
6.	Mrs. Compton—salary " " "	75.00
7.	Dr. J. H. Shepard " " "	15.00
8.	Dr. A. T. McGinty " " "	37.00
9.	Chas. C. Navelet " " "	15.45
10.	L. H. Helwig—claim—tax services re gift & in- come tax matters, San Jose, Calif.....	650.00
11.	Miscellaneous debts	15.45
12.	Federal income tax.....	125.00

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule K—(Continued)		
Item No.	Creditor and nature of claim	Amount
13.	Calif. income tax	34.00
14.	Deficiency—U. S. gift tax	27.00
15.	“ 1936 U. S. income taxes	14.00

Total (also enter under the Recapitulation, Schedule O)		\$ 1535.68

(If more space is needed, insert additional sheets of same size)

Estate of Adolph J. Koch

Instructions for Schedule K

Debts of Decedent

Itemize under this schedule only valid debts of the decedent owed by him at the time of death, except those secured by mortgage or other lien upon his property. Any indebtedness secured by a mortgage or other lien upon property of the gross estate should be entered under Schedule L. If the amount of the debt is disputed or the subject of litigation, only such amount may be deducted as the estate concedes to be a valid claim. If the claim is contested, that fact should be stated.

If the claim is founded upon a promise or agreement the deduction is limited to the extent that the liability was contracted bona fide for an adequate and full consideration in money or money's worth. A pledge or subscription evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible only to the extent that such pledge or subscription was made bona

(Petitioner's and Respondent's Exhibit A-1—
Continued)

fide for an adequate and full consideration in cash or its equivalent.

The deduction for property taxes is limited to such taxes as accrued prior to the date of the decedent's death. Federal taxes on income received during decedent's lifetime are deductible, but taxes on income received after death are not deductible.

Enter in this schedule notes unsecured by mortgage or other lien and give full details, including name of payee, face and unpaid balance, date and term of note, interest rate and date to which interest was paid prior to death. Care must be taken to state the exact nature of the claim as well as the name of the creditor. If the claim is for services rendered over a period of time, state the period covered by the claim. Example: Edison Electric Illuminating Co., for electric service during December 1935, \$25.

If the amount of the claim is the unpaid balance due on a contract for the purchase of any property of the gross estate, indicate the schedule and item number where such property is returned. If the claim represents a joint and several liability, the facts must be fully stated and the financial responsibility of the co-obligor explained.

All vouchers or original records should be preserved for inspection by an Internal Revenue agent.

For further instructions, see articles 29, 30, 36, 37, and 52 of Regulations No. 80.

(Petitioner's and Respondent's Exhibit A-1—
Continued)Schedule L
MORTGAGES AND LIENS

(See instructions on reverse of this sheet)

Item No.	Description	Amount
None		\$ _____
Total (also enter under the Recapitulation, Schedule O)	\$.....

(If more space is needed, insert additional sheets of same size)

Estate of Adolph J. Koch

Instructions for Schedule L

Mortgages and Liens

Itemize under this schedule only obligations secured by mortgages or other liens upon property included in the gross estate. List under this schedule all notes and other obligations secured by the deposit of collateral, such as stocks, bonds, etc. Debts of the decedent unsecured by mortgage or other lien upon the property should be listed under Schedule K. Identify, by indicating under the column headed "Description", the particular schedule and item number where such property subject to the mortgage or lien is returned under the gross estate. The full value of the property, without any reduction for the mortgage or other indebtedness, must be returned as part of the gross estate. Real estate situated outside the United States does not form a part of the gross estate for the purpose of the tax, and no deduction may be taken of any

(Petitioner's and Respondent's Exhibit A-1—
Continued)

mortgage thereon, or any indebtedness in respect thereto.

Show the name and address of the mortgagee, payee, or obligee, and the date and term of the mortgage, note, or other agreement under which the indebtedness is established. Show the face amount, the unpaid balance, the rate of interest, and date to which the interest was paid prior to the decedent's death.

Mortgages upon, or any indebtedness with respect to, property included in the gross estate is deductible only to the extent that the liability was contracted bona fide and for an adequate and full consideration in money or money's worth.

For further instructions, see articles 29, 30, 38, and 52 of Regulations No. 80.

Schedule M

NET LOSSES AND SUPPORT OF DEPENDENTS
(See instructions on reverse of this sheet)

Item No.	Net losses during administration	Amount
----------	----------------------------------	--------

None

Total (also enter under the Recapitulation,
Schedule O)

\$

Item No.	Support of Dependents	Amount
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None

Total (also enter under the Recapitulation,
Schedule O)

\$

(If more space is needed, insert additional sheets of same size)
Estate of Adolph J. Koch

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Instructions for Schedule M

Net Losses and Support of Dependents

Losses.—Losses are strictly limited to those arising from fire, storm, shipwreck, or other casualty, or from theft, to the extent that such losses are not compensated for by insurance or otherwise. Losses must occur during the settlement of the estate. Depreciation in the value of securities or other property does not constitute a deductible loss. In the case of a decedent who died subsequent to the effective date of the Revenue Act of 1932, such losses are not deductible if, at the time of the filing of the estate tax return, such losses had been claimed as a deduction for income tax purposes in an income tax return. In listing losses, full particulars must be given not only as to the loss sustained, but the cause thereof, and in the case of death of livestock, the cause of death must be stated, if known. If insurance or other compensation was received on account of loss, state the amount collected. The property with respect to which the loss is claimed should be identified by indicating the particular schedule and item number where such property is returned under the gross estate.

If the optional valuation is adopted, deduction for any loss is limited to the extent that such loss is not in effect allowed in the valuation of the item in the gross estate.

Support of dependents.—No deduction may be

(Petitioner's and Respondent's Exhibit A-1—
Continued)

taken for support of dependents unless the local law permits the allowance, the local court has made a decree specifying the amount thereof, and in fact the allowance was reasonably required for the support of the person in question during the settlement of the estate, and actual disbursement was made from the assets of the estate to the dependents.

For further instructions, see articles 29, 39, 40, and 52 of Regulations No. 80.

Schedule N
CHARITABLE, PUBLIC, AND SIMILAR GIFTS
AND BEQUESTS

(See instructions on reverse of this sheet)

Item No.	Name and address of beneficiary	Character of institution	Amount
	None		\$
<hr/>			
Total (also enter under the Recapitulation, Schedule O)			\$.....

(If more space is needed, insert additional sheets of same size)

Estate of Adolph J. Koch

Instructions for Schedule N
Charitable, Public, and Similar Gifts and Bequests

Deductions authorized for charitable, public, and similar gifts and bequests as set forth in Regulations No. 80 should be claimed under this schedule. If the transfer was made by will, duplicate copies, one certified, of the order admitting the will to pro-

(Petitioner's and Respondent's Exhibit A-1—
Continued)

bate, in addition to the copies of the will, should be submitted with the return. If the transfer was made by any other written instrument, duplicate copies thereof should be submitted with the return, and if the instrument is of record one copy should be certified and if not of record one copy should be verified. If the transfer was made by will, an affidavit of the executor must be submitted, showing whether the decedent's will has been, or to the best of his knowledge, information, and belief, will be contested. If claim is made for deduction of the value of the residue or of a portion thereof (e. g., present worth of a remainder interest in the residue), there should be submitted a copy of the computation whereby the value was determined.

Where the decedent died after the enactment of the Revenue Act of 1932, and under the terms of the will or the law of the jurisdiction wherein the estate is administered or the law of the jurisdiction imposing the particular tax, the Federal estate tax (including the additional estate tax imposed by the Revenue Act of 1932) or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any bequest, legacy, or devise deductible hereunder, the sum deductible is the amount of such bequest, legacy, or devise so reduced.

If the optional valuation is adopted, any bequest, legacy, devise, or transfer deductible under this schedule shall be valued for the purpose of the deduction as of the date of the decedent's death, with adjustment for any difference in the value of the

(Petitioner's and Respondent's Exhibit A-1—
Continued)

property 1 year after his death, or at the date of its sale, or exchange within such year, except that no such adjustment may take into account any difference in value due to mere lapse of time or to the occurrence or non-occurrence of a contingency.

See articles 44 to 47, inclusive, and article 54 of Regulations No. 80.

Schedule O
RECAPITULATION

Schedule	Gross estate	Value under option	Value at date of death
A	Real estate	\$	\$ 0.00
B	Stocks and bonds .....	.....	100.00
C	Mortgages, Notes, and Cash .....	.....	115962.36
D	Insurance .....	.....	.....
E	Jointly owned property .....	.....	26543.03
F	Other miscellaneous property .....	.....	.....
G	Transfers during decedent's life.....	.....	.....
H	Powers of appointment .....	.....	.....
I	Property previously taxed.....	.....	.....
Total Gross Estate		\$ 142605.39	

Schedule	Deductions	Amount
J	Funeral expenses	\$ 348.08
	Executors' commissions	1990.62
	Attorney's fees	1990.62
	Miscellaneous administration expenses	179.45
K	Debts of decedent	1535.68
L	Mortgages and liens .....	.....
M	Net losses during administration .....	.....
	Support of dependents .....	.....
N	Charitable, public, and similar gifts and bequests .....	.....
Total Deductions, except specific exemption and property previously taxed		\$ 6044.45

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule P

NET ESTATE FOR TAX IMPOSED BY 1926 ACT, AS
AMENDED—RESIDENT OR CITIZEN

Instructions.—This schedule should be used only for the estate of an resident or citizen of the United States, except that if death occurred prior to the enactment of the Revenue Act of 1934 it should not be used for the estate of a nonresident citizen of the United States.

1. Total gross estate	\$ 142605.39
2. Total deductions, except specific exemption and property previ- ously taxed	\$ 6044.54
3. Specific exemption	100,000.00

4. Total deductions, except property previously taxed (Item 2 plus Item 3)	\$ 106044.45
5. Deductions for property previously taxed with- out proportionate re- duction (Schedule I, item e)	\$
6. Proportionate reduction (proportion of item 4 that item 5 bears to item 1)	\$

7. Net deduction for property previ- ously taxed (item 5 minus item 6)	\$

8. Total deductions (item 4 plus item 7)	\$ 106044.45

9. Net estate (item 1 minus item 8)....	\$ 36560.94

Estate of Adolph J. Koch

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule Q

NET ESTATE FOR ADDITIONAL TAX IMPOSED BY
1932 ACT, AS AMENDED—RESIDENT OR CITIZEN

Instructions.—This schedule should be used only for the estate of a resident or citizen of the United States, except that if death occurred prior to the enactment of the Revenue Act of 1934 it should not be used for the estate of a nonresident citizen of the United States.

1. Total gross estate	\$ 142605.39
2. Total deductions, except specific exemption and property previ- ously taxed	\$ 6044.45
3. Specific exemption (40,000 if death occurred on or after Aug. 31, 1935; \$50,000 if prior thereto)....	40000.00
4. Total deductions, except property previously taxed (item 2 plus item 3)	\$ 46044.45
5. Deduction for property previously taxed with- out proportionate re- duction (Schedule I, item e)	\$
6. Proportionate reduction (proportion of item 4 that item 5 bears to item 1)	\$
7. Net deduction for property previ- ously taxed (item 5 minus item 6)	\$
8. Total deductions (item 4 plus item 7)	46044.45
9. Net estate (item 1 minus item 8)	\$ 96560.94

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule R

NET ESTATE—NONRESIDENT ALIEN

Instructions.—This schedule should be used only for the estate of a nonresident alien of the United States, except that if death occurred prior to the enactment of the Revenue Act of 1934 it should also be used for the estate of a nonresident citizen of the United States. No deductions are allowable hereunder unless the value of that part of the gross estate situated outside the United States is set forth.

1. Value of gross estate in the United States (Schedules A, B, C, D, E, F, G, H, and I).....\$.....
2. Value of gross estate outside the United States (insert itemized schedule sheet showing values)
3. Value of total gross estate wherever situated (item 1 plus item 2)\$.....
4. Gross deductions under Schedule J, K, L, and M
5. Net deductions under Schedule J, K, L, and M (that proportion of item 4 that item 1 bears to item 3)\$.....
6. Charitable, public, and similar gifts and be- quests, Schedule N
7. Total deductions, except property previously taxed (item 5 plus item 6).....\$.....
8. Deduction for property previously taxed without proportionate re- duction (Schedule I, item e).....\$.....
9. Proportionate reduction (propor- tion of item 7 that item 8 bears to item 1)
10. Net deduction for property previously taxed (item 8 minus item 9).....\$.....
11. Total deductions (item 7 plus item 10)\$.....
12. Net estate (item 1 minus item 11).....\$.....

Estate of Adolph J. Koch

(Petitioner's and Respondent's Exhibit A-1—
Continued)

COMPUTATION OF TAX

(See instructions on reverse of this sheet)

SIT.—\$8,610.04—per agreement upon contingent taxes.

1. Gross tax imposed by 1926 act, as amended	\$ 365.61
2. Credit for gift tax imposed by 1924 and/or 1932 act, as amended.....	0.00
3. Gross tax less credit for gift tax (item 1 minus item 2)	\$ 365.61
4. Credit for estate, inheritance, legacy, or succession tax	292.48
5. Net tax imposed by 1926 act, as amended (item 3 minus item 4).....	\$ 73.13
6. Total gross taxes imposed by 1926 and 1932 acts, as amended (Tentative Tax) \$9,118.53	
7. Gross tax imposed by 1926 act, as amended	365.61
8. Gross additional tax (item 6 minus item 7)	\$8,752.92
9. Credit for gift tax imposed by 1932 act, as amended	
10. Net additional tax (item 8 minus item 9)	8,752.92
11. Total net for tax (item 5 plus item 10)	\$8,826.05

Affidavit of Person or Persons Filing Return

We/I, George A. Koch the undersigned executor . . . /administrat . . . /beneficiar . . . /custodian /trustee, swear (or affirm) that we/I have carefully examined this return (including the additional sheets inserted, if any); that to the best of our/my

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Computation Tax—(Continued)

knowledge, information, and belief, herein is listed all of the property constituting the decedent's gross estate, as defined by the statute (or if the decedent was a nonresident alien of the United States, or a nonresident, regardless of citizenship, if he died prior to the enactment of the Revenue Act of 1934, herein is listed all of the property constituting the gross estate situated in the United States, as defined by the statute, and, if deductions are claimed, herein is listed separately all of the property constituting the gross estate situated outside the United States); that we/I have no knowledge of any transfers made or trusts created by the decedent during his lifetime of the value of \$5,000 or more, other than bona-fide sales for an adequate and full consideration in money or money's worth, except as stated in Schedule G; and that, to the best of our/my knowledge, information, and belief, the value shown in the last column of each schedule for every item of property listed herein under the gross estate is the fair market value as of the date of the decedent's death (and, in case the optional valuation is herein adopted, that all of the distributions, sales, exchanges, and other dispositions within the year following the decedent's death of the property included in the gross estate, together with the dates thereof, are fully disclosed, and that the value under the option for every item of property is the fair market value as of the applicable valuation date or is such value as prop-

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Computation Tax—(Continued)

erly adjusted), that the debts, expenses, and charges entered herein as deductions from the gross estate are correct and legally allowable, and that all statements made herein are true and correct.

(Signature) GEORGE A. KOCH

(Address) 144 Funston Ave

San Francisco, Cal

(Signature)

(Address)

(Signature)

(Address)

Sworn to and subscribed before me this 16th day of October, 1939.

(Notarial)

(Seal) RICHARD I. McCARTHY

(Signature and title of officer administering oath)

Affidavit of Attorney or Agent Preparing Return

I swear (or affirm) that I prepared this return for the person or persons signing the above affidavit and that this return, including the additional sheets inserted, if any, is a true, correct, and complete statement of all the information respecting the estate tax liability of this estate of which I have any knowledge.

FABER L. JOHNSTON

(Address) 1st Nat'l Bank Bldg.

San Jose, Calif.

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Computation Tax—(Continued)

Sworn to and subscribed before me this 16th day of October, 1939.

(Notarial)

(Seal) RICHARD I. McCARTHY

(Signature and title of officer administering oath)

Estate of Adolph J. Koch

Instructions for Computation of Tax

For computation of tax, use the table set forth on the inside of the back cover.

Item 1, "Gross tax imposed by 1926 act, as amended", is computed, by means of column 4 of the table, on the value of the net estate shown under Schedule P or Schedule R, as the case may be.

Item 2, "Credit for gift tax imposed by 1924 and/or 1932 act, as amended", is allowed against the gross tax imposed by the Revenue Act of 1926, as amended, if paid by the decedent in respect of property included in the gross estate. If such gift tax was imposed by the Revenue Act of 1924, as amended, the entire amount is allowed. If such gift tax was imposed by the Revenue Act of 1932, or by such act as amended, the credit cannot exceed the proportion of the gross estate tax, item 1, that the value of the included gift taxed bears to the entire gross estate. (See article 9 (a) of Regulations No. 80.)

Item 4, "Credit for estate, inheritance, legacy, or succession tax", cannot exceed 80 percent of

(Petitioner's and Respondent's Exhibit A-1—
Continued)

item 3. (See article 9 (b) of Regulations No. 80.)

Item 6, "Total gross taxes imposed by 1926 and 1932 acts, as amended (Tentative Tax)", is computed on the value of the net estate shown under Schedule Q or Schedule R, as the case may be. If the decedent died on or after August 31, 1935, column 1 of the table should be used for this item. If the decedent died prior to August 31, 1935, and after May 10, 1934, column 2 of the table should be used for this item. If the decedent died prior to May 11, 1934, and after the enactment of the Revenue Act of 1932, column 3 of the table should be used for this item.

Item 9, "Credit for gift tax imposed by 1932 act, as amended", is allowed against the gross additional tax if paid by the decedent in respect of property included in the gross estate. This credit is allowable for gift tax imposed by the 1932 act as originally enacted or by that act as amended. Such credit cannot exceed the proportion of the gross additional estate tax that the value of the included gift taxed bears to the entire gross estate, and furthermore cannot exceed the difference between the total amount of the gift tax and the gift tax credit allowed against the gross estate tax imposed by the 1926 act, as amended. (See article 9 (a) of Regulations No. 80.)

Item 11, "Total net tax", is the sum of the net estate tax imposed by the Revenue Act of 1926, as

(Petitioner's and Respondent's Exhibit A-1—
Continued)

amended, and the net additional estate tax imposed by the Revenue Act of 1932, as amended.

If the decedent died prior to the enactment of the Revenue Act of 1926 consult table II of Regulations No. 80 for the computation of the tax.

For further instructions, see articles 6 to 9, inclusive, of Regulations No. 80.

Example (estate subject to both tax imposed by Revenue Act of 1926, as amended, and additional tax imposed by Revenue Act of 1932, as amended, and involving credit for State inheritance and estate taxes): A resident decedent died January 15, 1936, and the value of the net estate shown under Schedule P is \$210,000. The tax shown in the first subcolumn of column 4 of the table on a net estate equaling \$200,000 is \$4,500. As \$210,000 exceeds \$200,000 and falls below \$400,000, the tax on the excess of \$10,000 is computed at the rate of 4 percent, the rate shown in the second subcolumn of column 4. The \$400 tax on such excess added to \$4,500 gives \$4,900, the gross tax imposed by the Revenue Act of 1926, as amended, which should be entered at item 1. Credit for gift tax is not involved in this example, but it will be assumed that the maximum amount of credit for State estate, inheritance, legacy, or succession taxes is allowable; that is, 80 percent, or \$3,920, which should be entered at item 4. The difference, which is the net tax imposed by the Revenue Act of 1926, as amended, is \$980. The net estate shown under

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Schedule Q is \$270,000. The amount of the total gross taxes imposed by the 1926 and 1932 acts, as amended, shown in the first subcolumn of column 1 on a net estate equaling \$200,000, is \$26,600. As \$270,000 exceeds \$200,000 and falls below \$400,000, the amount of the total gross taxes on the excess of \$70,000 is computed at 20 percent, the rate shown in the second subcolumn of column 1. The \$14,000, computed on such excess, added to \$26,600, gives \$40,600, the total gross taxes imposed by the 1926 and 1932 acts, as amended, and \$40,000 should be entered at item 6. From the \$40,000 is subtracted \$4,900, the gross tax imposed by the Revenue Act of 1926, as amended, and the difference, \$35,700, is the gross additional tax imposed by the Revenue Act of 1932, as amended, which amount should be entered at item 8. As in this example no credit for gift tax is involved, the gross additional tax is the same as the net additional tax. The net tax imposed by the Revenue Act of 1926, as amended, \$980, item 5, added to the net additional tax, \$35,700, item 10, results in a total net tax of \$36,680, item 11. The computation of the tax in this example is set up as follows:

(Petitioner's and Respondent's Exhibit A-1—
Continued)

1. Gross tax imposed by 1926 act, as amended	\$ 4,900
2. Credit for gift tax imposed by 1924 and/or 1932, as amended	0
3. Gross tax less credit for gift tax.....	\$ 4,900
4. Credit for estate, inheritance, legacy, or succession tax	3,920
5. Net tax imposed by 1926 act, as amended	\$980
6. Total gross taxes imposed by 1926 and 1932 acts, as amended (Tentative Tax)....	\$40,600
7. Gross tax imposed by 1926 act, as amended	4,900
8. Gross additional tax	\$35,700
9. Credit for gift tax imposed by 1932 act, as amended	0
10. Net additional tax	35,700
11. Total net tax	36,680

Example (estate subject to additional estate tax only): A resident decedent died on July 1, 1936, and the value of the gross estate is \$85,000. Deductions for administration expenses and debts are allowed in the amount of \$10,000, leaving \$75,000 before the deduction of the specific exemption. As the specific exemption allowed by the Revenue Act of 1926, as amended, is \$100,000, it is apparent under Schedule P that this estate is not subject to the estate tax imposed by that act. However, as the specific exemption allowed by the Revenue Act of 1932, as amended by the Revenue Act of 1935, is only \$40,000, this estate is subject to such

(Petitioner's and Respondent's Exhibit A-1—
Continued)

additional estate tax. For the purpose of the additional estate tax the net estate is \$35,000, as would be shown under Schedule Q. The total gross taxes imposed by the 1926 and 1932 acts, as amended, shown in the first subcolumn of column 1 on a net estate equaling \$30,000 are \$1,200. As \$35,000 exceeds \$30,000 and falls below \$40,000, the amount of the total gross taxes on the excess of \$5,000 is computed at the rate of 8 percent, the rate shown in the second subcolumn of column 1. The \$400, computed on such excess, added to \$1,200, gives \$1,600, the total gross taxes imposed by the 1926 and 1932 acts, as amended. As no estate tax is imposed by the Revenue Act of 1926, as amended, this amount is the same as the gross additional tax. As credit for gift tax is not involved in this example, the gross additional tax is the same as the net additional tax. It will be noted that no credit for estate, inheritance, legacy, or succession taxes is authorized in the computation of the additional tax, and consequently the total net tax in this case is \$1,600.

Example (explaining computation of gift tax credits): The decedent, a resident, died on February 1, 1936. The amount of the gross estate tax imposed by the 1926 act, as amended, is \$15,000, and the amount of the total gross estate taxes imposed by the 1926 and 1932 acts, as amended, is \$91,900. The total value of the gross estate is \$600,000. During his life the decedent made cash

(Petitioner's and Respondent's Exhibit A-1—
Continued)

gifts in contemplation of death as follows: In 1925, \$60,000; in 1933, \$300,000; and in 1934, \$70,000. These gifts (total, \$430,000) are included in the gross estate. He paid gift taxes on the gifts as follows: For 1925, \$100; for 1933, \$13,725; and for 1934, \$5,200. Credit for the gift tax imposed by the 1924 act is allowed against the gross tax imposed by the 1926 act, as amended, in the entire amount, \$100. Credit for the gift taxes (total, \$18,925) imposed by the Revenue Act of 1932 is allowed against the gross tax imposed by the 1926 act, as amended, not to exceed the proportion of \$15,000, item 1, that the value of such included gifts taxed, \$360,000, bears to the entire gross estate, \$600,000. It will be noted that the amount of the gifts taxed, under the 1932 act is \$370,000 less \$10,000, the amount excluded in determining the total gifts for the purposes of the gift Instructions for Computation of Tax—Continued tax. \$15,000 multiplied by .60 gives \$9,000, the maximum credit here allowed for such taxes. The total gift tax credits allowed against the gross tax imposed by the Revenue Act of 1926, as amended, is \$9,100, which is entered at item 2. The difference between \$15,000 and \$9,100 is entered at item 3. Maximum credit for State inheritance and estate taxes is allowed in this example in the amount of \$4,720, entered at item 4. The net tax imposed by the Revenue Act of 1926, as amended, is \$1,180, item 5. \$15,000 is entered at item 7 and

(Petitioner's and Respondent's Exhibit A-1—
Continued)

the gross additional tax, \$76,900, is entered at item 8. No credit against gross additional estate tax is allowable for gift tax paid under the Revenue Act of 1924. Credit for the gift taxes paid (total \$18,925) under the Revenue Act of 1932, is allowed against the gross additional estate tax, not to exceed the proportion of \$76,900, item 8, that the value of the included gifts taxed, \$360,000, bears to the entire gross estate, \$600,000. The amount of this proportion is \$46,140. However, this credit is further limited by an amount not to exceed the difference between the total of such gift taxes, \$18,925, and the credit, \$9,000, allowed for such taxes against the estate tax imposed by the 1926 act, as amended. This difference, \$9,925, is the amount of the credit allowed against the gross additional tax, and is entered at item 9. The net additional tax, item 8 minus item 9, is \$66,975, and is entered at item 10. The total net tax, \$68,155, which is the sum of item 5 and item 10, is shown at item 11. The computation of the tax in this example is set up as follows:

(Petitioner's and Respondent's Exhibit A-1—
Continued)

1. Gross tax imposed by 1926 act, as amended	\$15,000
2. Credit for gift tax imposed by 1924 and/or amended	9,100
3. Gross tax less credit for gift tax.....	\$ 5,900
4. Credit for estate, inheritance, legacy, or succession tax	4,720
5. Net tax imposed by 1926 act, as amended	\$1,180
6. Total gross taxes imposed by 1926 and 1932 acts, as amended (Tentative Tax)..	\$91,000
7. Gross tax imposed by 1926 act, as amended	15,000
8. Gross additional tax	\$76,900
9. Credit for gift tax imposed by 1932 act, as amended	9,925
10. Net additional tax	66,975
11. Total net tax	\$68,155

(Petitioner's and Respondent's Exhibit A-1—Continued)

TABLE FOR COMPUTING ESTATE TAX

(A)	(B)	(1)		(2)		(3)		(4)	
		In effect on and after August 31, 1935. (Tentative tax, 1932 act as amended.) Total taxes imposed by 1926 act and by 1932 act amended by 1934 act.		In effect from May 11, 1934, to August 30, 1935, Inclusive. (Tentative tax, 1932 act as amended.) Total taxes imposed by 1926 act and by 1932 act as amended by 1934 act.		In effect from 5 p.m. Eastern standard time, June 6, 1932, to May 10, 1934, Inclusive. (Tentative tax, 1932 act.) Total taxes imposed by 1926 act and by 1932 act.		In effect after 10:25 a.m., eastern standard time, Feb. 26, 1926. Revenue Act of 1926.	
Net estate equaling—	net estate not exceeding—	Tax on amount in column (A)	Rate of tax on excess over amount in column (A) Percent	Tax on amount in column (A)	Rate of tax on excess over amount in column (A) Percent	Tax on amount in column (A)	Rate of tax on excess over amount in column (A) Percent	Tax on amount in column (A)	Rate of tax on excess over amount in column (A) Percent
	\$10,000	.....	2	.....	1	.....	1	.....	1
\$10,000	20,000	\$200	4	\$100	2	\$100	2	\$100	1
20,000	30,000	600	6	300	3	300	3	200	1
30,000	40,000	1,200	8	600	4	600	4	300	1
40,000	50,000	2,000	10	1,000	5	1,000	5	400	1
50,000	70,000	3,000	12	1,500	7	1,500	7	500	2
70,000	100,000	5,400	14	2,900	9	2,900	7	900	2
100,000	200,000	9,600	17	5,600	12	5,000	9	1,500	3
200,000	400,000	26,600	20	17,600	16	14,000	11	4,500	4
400,000	600,000	66,600	23	49,600	19	36,000	13	12,500	5
600,000	800,000	112,600	26	87,600	22	62,000	15	22,500	6
800,000	1,000,000	164,600	29	131,600	25	92,000	17	34,500	7
1,000,000	1,500,000	222,600	32	181,600	28	126,000	19	48,500	8
1,500,000	2,000,000	382,600	35	321,600	31	221,000	21	88,500	9
2,000,000	2,500,000	557,600	38	476,600	34	326,000	23	133,500	10
2,500,000	3,000,000	747,600	41	646,600	37	441,000	25	183,500	11
3,000,000	3,500,000	952,600	44	831,600	40	566,000	27	238,500	12
3,500,000	4,000,000	1,172,600	47	1,031,600	43	701,000	29	298,500	13
4,000,000	4,500,000	1,407,600	50	1,246,600	46	846,000	31	363,500	14
4,500,000	5,000,000	1,657,600	53	1,476,600	48	1,001,000	33	433,500	14
5,000,000	6,000,000	1,922,600	56	1,716,600	50	1,166,000	35	503,500	15
6,000,000	7,000,000	2,482,600	59	2,216,600	52	1,516,000	37	653,500	16
7,000,000	8,000,000	3,072,600	61	2,736,600	54	1,886,000	39	813,500	17
8,000,000	9,000,000	3,682,600	63	3,276,600	56	2,276,000	41	983,500	18
9,000,000	10,000,000	4,312,600	65	3,836,600	58	2,686,000	43	1,163,500	19
10,000,000	20,000,000	4,962,600	67	4,416,600	60	3,116,000	45	1,353,500	20
20,000,000	50,000,000	11,662,600	69	10,416,600	60	7,616,000	45	3,353,500	20
50,000,000	.....	32,362,600	70	28,416,600	60	21,116,000	45	9,353,500	20

(Petitioner's and Respondent's Exhibit A-1—
Continued)

(Space for Use of Bureau)

Tax on Return or Deficiency	Amount	Assessments List	Page	Line	Date	Payments Principal Interest
Ret Est Tax	\$8826.05	Oct '39	104	0	10-19-39	\$8826.05

Determination by Bureau

In the Name of God, Amen:

I, Adolph J. Koch, of the County of Santa Clara, State of California, being of sound mind and disposing memory, and mindful of the uncertain duration of human life, do hereby make, publish and declare the following to be my Last Will and Testament, that is to say:

I.

I give and bequeath unto my brother Karl Koch of Denver, Colorado, the sum of \$5000.00.

In the event that my brother Karl Koch should not be living at my death, then I give and bequeath unto his wife Wanda Koch the sum of \$5000.00.

II.

I give and bequeath unto my sister-in-law Mollie Koch the sum of \$1000.00, provided she be living at my death.

III.

I give and bequeath unto my niece Daisy Koch of San Francisco, California, the sum of \$1000.00.

(Petitioner's and Respondent's Exhibit A-1—
Continued)

IV.

One-half of all the rest and residue of my property of every kind and nature, and wheresoever situate, I give, devise and bequeath unto my son George A. Koch.

V.

The other one-half of all the residue of my property of every kind and nature, and wheresoever situate, I give, devise and bequeath unto my son
should

George A. Koch, and in case he ~~should~~ die, or should refuse or be incapacitated to act, then unto my son-in-law James B. Swickard, in trust, however, to manage the real estate, with power to lease the same, to remodel or repair the buildings or other improvements thereon, to sell said real property, and to do such other things as he may consider necessary or proper, and to loan out the income therefrom together with the income from all personal property and any other moneys of said trust in his hands at any time, or invest the same in mortgages or deeds of trust on real estate, or pledges of real property, or in stocks, bonds or other income producing property, and to pay out of the income of such properties such moneys as he may deem necessary in his discretion for the support, education and maintenance of my grandson Ralph Swickard, until my said grandson shall reach the age of twenty-one years, and

(Petitioner's and Respondent's Exhibit A-1—
Continued)

when my said grandson shall reach the age of twenty-one years, to deliver to my said grandson one-fourth of all the trust property then remaining in the hands of my said trustee, to be his absolutely, free of any trust, and to pay one-half of all the income of the remaining trust property quarterly to my said grandson Ralph Swickard until he shall reach the age of twenty-five years, and upon my said grandson reaching the age of twenty-five years then my said trustee is to deliver one-half of all said trust property then remaining in his hands to my said grandson, to be his free from any trust, and to pay all the net income of the trust property remaining in his hands to my grandson until he shall reach the age of thirty years.

I hereby authorize my said trustee, however, if he deem it advisable, and at his sole discretion, to deliver all the said trust property unto my said grandson when he shall reach the age of twenty-five years, and upon the delivery unto my said grandson of all the said property said trust shall cease. If my said trustee does not exercise this discretion, then upon my said grandson reaching the age of thirty years said trust shall cease and terminate and all of the trust property then remaining in the hands of my said trustee shall go, belong and be turned over to my said grandson Ralph Swickard, to be his absolutely, free from any trust.

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Should my grandson Ralph Swickard die before reaching the age of twenty-one years, leaving a child or children, then said trust shall cease and all said trust property shall go, belong and be turned over to said child or children free from any trust. Should my said grandson die before reaching the age of twenty-one years leaving no children surviving him, then on his said death said trust shall cease and terminate and all said trust property shall go, belong and be turned over to my son George A. Koch and my grandson Kenneth Koch in equal shares, share and share alike. And should my son George A. Koch be not living at that time then all said trust property shall go, belong and be turned over to my grandson Kenneth Koch. And should Kenneth Koch die before that time leaving a child or children surviving him then all said trust property shall go, belong and be turned over to said child or children. Should Kenneth Koch die before that time leaving no child or children surviving him and my son George A. Koch should still be living, then all said trust property shall go, belong and be turned over to my son George A. Koch. Should, however, both my son George A. Koch and my grandson Kenneth Koch be not living at that time and no child of Kenneth Koch be surviving then all said trust property shall go, belong and be turned over to the children of my brothers Fred Koch, Karl Koch

(Petitioner's and Respondent's Exhibit A-1—
Continued)

and Valentine Koch to be divided equally among them, share and share alike.

Should my grandson Ralph Swickard die after reaching the age of twenty-one years but before reaching the age of twenty-five years, leaving a child or children then said trust shall cease and all said trust property then remaining in the hands of my said trustee shall go, belong and be turned over to said child or children free from any trust. Should my said grandson die after reaching the age of twenty-one years but before reaching the age of twenty-five years, leaving no child surviving him then on his said death said trust shall cease and terminate and all said trust property then remaining shall go, belong and be turned over to my son George A. Koch and my grandson Kenneth Koch in equal shares, share and share alike. Should, however, my son George A. Koch be not living at that time then all said trust property shall go belong and be turned over to my grandson Kenneth Koch, and should Kenneth Koch die before that time leaving a child or children surviving him then all said trust property shall go, belong and be turned over to said child or children. Should Kenneth Koch die before that time leaving no child or children surviving him and my son George A. Koch should still be living, then all said trust property shall go, belong and be turned over to my son George A. Koch. Should, however, both my son George A. Koch and my

(Petitioner's and Respondent's Exhibit A-1—
Continued)

grandson Kenneth Koch be not living at that time and no child of Kenneth Koch be surviving, then all said trust property shall go, belong and be turned over to the children of my brothers Fred Koch, Karl Koch and Valentine Koch, to be divided equally among said children share and share alike.

Should my grandson Ralph Swickard die after reaching the age of twenty-five years but before reaching the age of thirty years, leaving a child or children, then said trust shall cease and all said trust property then remaining in the hands of said trustee shall go, belong and be turned over to said child or children free from any trust. Should my said grandson die after reaching the age of twenty-five years but before reaching the age of thirty years, no child surviving him, then on his death said trust shall cease and all said trust property remaining shall go, belong and be turned over to my son George A. Koch and my grandson Kenneth Koch in equal shares. And should Kenneth Koch die before that time leaving a child or children surviving then all said trust property shall go, belong and be turned over to said child or children. Should Kenneth Koch die before that time leaving no child or children surviving him, and my son George A. Koch should still be living, then all said trust property shall go, belong and be turned over to my son George A. Koch. Should, however, both my son George A. Koch and my grandson Kenneth Koch be not living at that time and no child or

(Petitioner's and Respondent's Exhibit A-1—
Continued)

children of Kenneth Koch be surviving, then all said trust property shall go, belong and be turned over to the children of my brothers Fred Koch, Karl Koch and Valentine Koch, to be divided equally among said children share and share alike.

Said trustee shall have all other powers hereinafter given him by the terms of this Will or that may be necessary or proper to carry out the terms of said trust.

VI.

The interest of my grandson Ralph Swickard, and all of the beneficiaries of the trust hereinbefore set forth, is hereby created inalienable, and it is particularly provided that the said Ralph Swickard, or any other beneficiary under said trust named, shall be without the right, power or authority to sell, pledge, mortgage or in any other manner to encumber, anticipate, or impair his beneficial interest in the trust or any part thereof. And no part of the income or principal of the trust shall be subject to the claims of any creditor or any beneficiary, nor liable to attachment or execution, or any other process of law, and every distribution of income or principal shall be made only to the beneficiary entitled to receive the same according to the terms of this trust, and upon the delivery to the trustee of the receipt of such beneficiary or his legal representative, it being hereby declared that all payments of said trust directed to be made

(Petitioner's and Respondent's Exhibit A-1—
Continued)

to my beneficiary Ralph Swickard, or any other beneficiary, are intended to be personal and shall not be made to any assignee of his, either by voluntary assignment by him or by assignment by operation of law.

VII.

I authorize and empower the trustee in this Will mentioned, or his successor, in his sole discretion:

(a) To retain the stocks, bonds or other investments, if any, which are respectively received by him from my Executor, although not of the character authorized by the laws of California for trust investments, or to dispose of or change any or all of such investments or any other securities which at any time form a part of said trust estate:

(b) To vote in person or by proxy upon all stocks or other securities held by the trustee:

(c) To exchange the securities of any corporation or company for other securities issued by the same or any other corporation or company at such times and upon such terms and conditions as said trustee in his discretion may deem proper:

(d) To consent to the reorganization, consolidation or merger of any corporation or company, or to the sale or lease of his or its property, or any portion thereof, to such corporation or company and upon such reorganization, consolidation, merger, sale or lease, to change securities held by the trustee for the securities issued in connection therewith:

(Petitioner's and Respondent's Exhibit A-1—
Continued)

(e) To pay all assessments, subscriptions and other sums of money as the trustee may deem expedient for the protection of the interests of the trust estate as holder of any stocks, bonds and other securities of any corporation or company, and to exercise any option contained in any stocks, bonds or other securities for the conversion of the same into other securities, or to take advantage of any rights to subscribe for additional stocks, bonds, or other securities, and to make any and all necessary payments therefor:

(f) To sell and convey at private sale, and to lease and exchange all or any part of the respective trust estates, both real and personal, at such times and at such prices and on such conditions as such trustee may deed best in order to carry out the provisions of this Will, and in this connection I give and grant him full power and authority to execute and deliver proper conveyances and transfers of said property both real and personal:

(g) In any case in which said trustee is required, pursuant to the provisions of this Will, to divide any portion of my estate into parts or shares, or to distribute the same, I authorize him in his discretion to make such division or distribution in kind or part in kind and part in money, and for the purpose of such allotment the judgment of such trustee concerning the propriety thereof and the respective values for the purpose

(Petitioner's and Respondent's Exhibit A-1—
Continued)

of distribution of the securities so allotted, shall be binding and conclusive on all persons interested in my estate:

(h) In case of securities taken or purchased for any of the trust funds at a premium the trustee hereof is not required to set aside any part of the income thereof as a sinking fund to retire or absorb such premium, or to make any other provision for depreciation in the value of the securities constituting any of the trust funds by reason of the approaching maturity of such securities or otherwise.

VIII.

I hereby nominate and appoint my son George A. Koch as the Executor of this my Will and I direct that no bond or other security be required of my said Executor, or as trustee hereunder, for the faithful performance of his duties as such, or on any sale hereunder.

IX.

I hereby give my said Executor full power and authority:

(a) To sell, lease and exchange all or any part of my estate both real and personal, at such prices and on such conditions as he may deem best:

(b) To settle or compromise any or all claims by or against my estate on such terms as he in his sole discretion may deem proper:

(c) To turn over as part of the shares of my

(Petitioner's and Respondent's Exhibit A-1—
Continued)

estate hereinabove devised or bequeathed, any stocks, bonds or other investments in which, at the time of my death, any property of my estate shall be invested, although not of the character authorized by the laws of the State of California for trust investments:

(d) To exchange the securities of any corporation or company for other securities issued by the same or any other corporation or company, at such times and upon such terms and conditions as he may in his sole discretion deem proper:

(e) To consent to the reorganization, consolidation or merger of any corporation or company, or to the sale or lease of its property, or any portion thereof, to any person, corporation or company, or to the lease by any person, corporation or company, of his or its property, or any portion thereof, to such corporation or company, and upon such reorganization, merger, sale, or lease, to exchange the securities held by him for the securities issued in connection therewith:

(f) To pay all assessments, subscriptions and other sums of money as he may deem expedient for the protection of the interests of my estate as the holder of any stocks, bonds or other securities of any corporation or company, and to exercise any option contained in any stocks, bonds or other securities for the conversion of the same into other securities, or to take advantage of any rights to subscribe for additional stocks, bonds, or other

(Petitioner's and Respondent's Exhibit A-1—
Continued)

securities, and to make any and all necessary payments therefor.

X.

I hereby revoke all former Wills by me made. In Witness Whereof I have hereunto set my hand this 25th day of July, A.D. 1935.

ADOLPH J. KOCH

The foregoing instrument consisting of nine pages including this, was at the day it bears date, signed by the testator, Adolph J. Koch, in our presence, and was by him then and there declared to us to be his Last Will and Testament and we, at his request and in his presence, and in the presence of each other, have hereunto subscribed our names and residences as witnesses thereto.

JOHN H. DREW,

residing at San Jose, California.

PAUL S. WILLIAMS

residing at San Jose, California.

CODICIL

I, Adolph J. Koch, hereby make, publish and declare the following to be a codicil to my foregoing Last Will and Testament dated July 25, 1935, that is to say:

I.

I hereby republish my said Will dated July 25, 1935 in all of its parts except as herein modified by this codicil.

(Petitioner's and Respondent's Exhibit A-1—
Continued)

II.

The one-half of all my property disposed of in Paragraph V of my said Will, I hereby give, devise and bequeath as follows:

The other one-half of all the residue of my property of every kind and nature, and wheresoever situate, I give, devise and bequeath unto my son George A. Koch, and in case he should die or should refuse or be incapacitated to act, then unto my son-in-law James B. Swickard, in trust, however, to manage the real estate, with power to lease the same, to remodel or repair the buildings or other improvements thereon, to sell said real property, and to do such other things as he may consider necessary or proper, and to loan out the income therefrom together with the income from all personal property and any other moneys of said trust in his hands at any time, or invest the same in mortgages or deeds of trust on real estate, or pledges of real property, or in stocks, bonds or other income producing property, and to pay out of the income of such properties such moneys as he may deem necessary in his discretion for the support, education and maintenance of my grandson Ralph Swickard, until my said grandson shall reach the age of twenty-five years, and when my said grandson shall reach the age of twenty-five years, to deliver to my said grandson one-fourth of all the trust property then remaining in the hands of my said trustee, to be his absolutely, free of any trust, and

(Petitioner's and Respondent's Exhibit A-1—
Continued)

to pay one-half of all the income of the remaining trust property quarterly to my said grandson Ralph Swickard until he shall reach the age of thirty years, and upon my said grandson reaching the age of thirty years then my said trustee is to deliver one-half of all said trust property then remaining in his hands to my said grandson, to be his free from any trust, and to pay all the net income of the trust property remaining in his hands to my said grandson until he shall reach the age of thirty-five years.

I hereby authorize my said trustee, however, if he deem it advisable, and at his sole discretion, to deliver all the said trust property unto my said grandson when he shall reach the age of thirty years, and upon the delivery unto my said grandson of all the said property said trust shall cease. If my said trustee does not exercise this discretion, then upon my said grandson reaching the age of thirty-five years said trust shall cease and terminate and all of the trust property then remaining in the hands of my said trustee shall go, belong and be turned over to my said grandson Ralph Swickard, to be his absolutely, free from any trust.

Should my grandson Ralph Swickard die before reaching the age of twenty-five years, leaving a child or children, then said trust shall cease and all said trust property shall go, belong and be turned over to said child or children free from any trust. Should my said grandson die before

(Petitioner's and Respondent's Exhibit A-1—
Continued)

reaching the age of twenty-five years leaving no children surviving him, then on his said death said trust shall cease and terminate and all said trust property shall go, belong and be turned over to my son George A. Koch and my grandson Kenneth Koch in equal shares, share and share alike. And should my son George A. Koch be not living at that time then all said trust property shall go, belong and be turned over to my grandson Kenneth Koch. And should Kenneth Koch die before that time leaving a child or children surviving him then all said trust property shall go, belong and be turned over to said child or children. Should Kenneth Koch die before that time leaving no child or children surviving him and my son George A. Koch should still be living, then all said trust property shall go, belong and be turned over to my son George A. Koch. Should, however, both my son George A. Koch and my grandson Kenneth Koch be not living at that time and no child of Kenneth Koch be surviving, then all said trust property shall go, belong and be turned over to the children of my brothers Fred Koch, Karl Koch and Valentine Koch to be divided equally among them, share and share alike.

Should my grandson Ralph Swickard die after reaching the age of twenty-five years but before reaching the age of thirty years, leaving a child or children, then said trust shall cease and all said trust property then remaining in the hands of my

(Petitioner's and Respondent's Exhibit A-1
Continued)

said trustee shall go, belong and be turned over to said child or children free from any trust. Should my said grandson die after reaching the age of twenty-five years but before reaching the age of thirty years, leaving no child surviving him then on his said death said trust shall cease and terminate and all said trust property then remaining shall go, belong and be turned over to my son George A. Koch and my grandson Kenneth Koch in equal shares, share and share alike. Should, however, my son George A. Koch be not living at that time then all said trust property shall go, belong and be turned over to my grandson Kenneth Koch, and should Kenneth Koch die before that time leaving a child or children surviving him then all said trust property shall go, belong and be turned over to said child or children. Should Kenneth Koch die before that time leaving no child or children surviving him and my son George A. Koch should still be living, then all said trust property shall go, belong and be turned over to my son George A. Koch. Should, however, both my son George A. Koch and my grandson Kenneth Koch be not living at that time and no child of Kenneth Koch be surviving, then all said trust property shall go, belong and be turned over to the children of my brothers Fred Koch, Karl Koch and Valentine Koch, to be divided equally among said children share and share alike.

(Petitioner's and Respondent's Exhibit A-1
Continued)

Should my grandson Ralph Swickard die after reaching the age of thirty years but before reaching the age of thirty-five years, leaving a child or children, then said trust shall cease and all said trust property then remaining in the hands of said trustee shall go, belong and be turned over to said child or children free from any trust. Should my said grandson die after reaching the age of thirty years but before reaching the age of thirty-five years, no child surviving him, then on his said death said trust shall cease and all said trust property remaining shall go, belong and be turned over to my son George A. Koch and my grandson Kenneth Koch in equal shares. And should Kenneth Koch die before that time leaving a child or children surviving then all said trust property shall go, belong and be turned over to said child or children. Should Kenneth Koch die before that time leaving no child or children surviving him, and my son George A. Koch should still be living, then all said trust property shall go, belong and be turned over to my son George A. Koch. Should, however, both my son George A. Koch and my grandson Kenneth Koch be not living at that time and no child or children of Kenneth Koch be surviving, then all said trust property shall go, belong and be turned over to the children of my brothers Fred Koch, Karl Koch and Valentine Koch, to be divided equally among said children share and share alike.

Said trustee shall have all other powers herein-

(Petitioner's and Respondent's Exhibit A-1
Continued)

above given him by the terms of my said Will, or that may be necessary or proper to carry out the terms of said trust.

In Witness Whereof, I have hereunto set my hand this 3rd day of March, 1937.

ADOLPH J. KOCH

The foregoing instrument consisting of six pages including this, was at the day it bears date signed by the testator, Adolph J. Koch, in our presence, and was by him then and there declared to us to be a Codicil to his Last Will and Testament, and we, at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names and residences as witnesses thereto.

PAUL S. WILLIAMS

residing at San Jose, California

JOHN H. DREW

residing at San Jose, California

[Endorsed]: Filed Jul 14 1939

Dec. 24 1938

In lieu of the \$1000 bequest in my will to my brothers widow Mrs. Valentine Koch I have this day given to her the \$1000 as an advancement and in payment of said bequest in my lifetime.

A. J. KOCH

GEORGE A. KOCH
FABER L. JOHNSTON

Witnesses

(Petitioner's and Respondent's Exhibit A-1—
Continued)

Jan 18 1939

In lieu of the 1000.00 bequest in my will to my brothers daughter Daisy Koch I have this day given her the 1000.00 as an advancement and in payment of said bequest in my lifetime.

A. J. KOCH

MRS ANGIE COMPTON

Witness

GEORGE A. KOCH

February 9, 1939

In lieu of the \$5,000.00 bequest in my will to my brother, Karl Koch, which amount I have previously given him, and as covered in his note dated December 1, 1938, is in full payment of said note and as an advancement and in payment of said bequest in my lifetime.

A. J. KOCH

Witnesses

MRS. A. COMPTON

GEORGE A. KOCH

The foregoing instrument is a correct copy of the original filed in this office Sept. 2 1939.

FRANK W. HOGAN

Attest: Sep 27 1939. Frank W. Hogan. County Clerk and ex-officio Clerk of the Superior Court of the State of California and the County of Santa Clara. [Illegible] Deputy.

[Endorsed]: Filed Aug 2, 1939 Frank W. Hogan, Clerk By T. R. Bonetti, Deputy.

(Petitioner's and Respondent's Exhibit A-1
Continued)

This Trust Agreement, made and entered into this 20th day of December, 1938, by and between A. J. Koch, widower, called hereinafter Trustor, and George A. Koch, called hereinafter Trustee:

Witnesseth: That in consideration of the trusts, covenants and agreements hereinafter set forth the Trustor has transferred, assigned and delivered to the Trustee certain personal properties and securities which said personal property is particularly described in Schedule A hereunto attached and made a part hereof:

It is understood and agreed that the Trustee has received and accepted the said personal property, to hold the said personal property and all the income received therefrom in trust for my grandson Ralph J. Swickard, to manage the same and to loan out the income therefrom and any other moneys in said trust in his hands at any time or invest the same in mortgages or deeds of trust on real estate, or in stocks, bonds or other income producing property and to pay out of such income such amount of moneys as the Trustee may deem necessary in his discretion for the support, education and maintenance of my grandson Ralph J. Swickard until my said grandson shall reach the age of twenty-one years: And when my said grandson shall reach the age of twenty-one years to pay all of said income quarterly to my said grandson Ralph J. Swickard

(Petitioner's and Respondent's Exhibit A-1
Continued)

or oftener within the discretion of my said Trustee, until he shall reach the age of twenty-five years: And on my said grandson reaching such age said trust shall cease and terminate and all said trust property then remaining in the hands of my said Trustee shall go, belong and be turned over to my grandson Ralph J. Swickard to be his absolutely free of any trust.

Should my said grandson die before reaching the age of twenty-five years leaving a child or children then said trust shall cease and all said trust property shall go, belong and be turned over to said child or children free of any trust: Should my said grandson die before reaching the age of twenty-five years leaving no child or children surviving him then on his said death said trust shall cease and all said trust property shall go, belong and be turned over to my son George A. Koch, and should my said son George A. Koch be not living at that time then all said trust property shall go, belong and be turned over to my grandson Kenneth Koch.

My said Trustee is hereby authorized and empowered to manage, control and collect the income from all the securities covered by this trust and in his hands at any time and to exchange said securities, if in his discretion he deems it best so to do, and to do all other things that may be necessary to properly manage, control and conserve the said trust property.

(Petitioner's and Respondent's Exhibit A-1
Continued)

In Witness Whereof the parties hereto have executed these presents.

A. J. KOCH
Trustor
GEORGE A. KOCH
Trustee

Schedule A

5—\$1000 Consolidated Edison of New York, 3½% debentures, due 1948.

10—\$1000 P. G. & E. 3½% bonds, Series I, due 1966.

10—\$1000 Am. Tel. & Tel. 3½% debentures, due 1961.

100 shares of common stock of American Tel. & Tel. Certificate No. QG84819.

\$10,000.00 Savings account deposit in The First National Bank of San Jose, California.

\$5,000.00 Independent Building-Loan Association certificate, of San Jose, California.

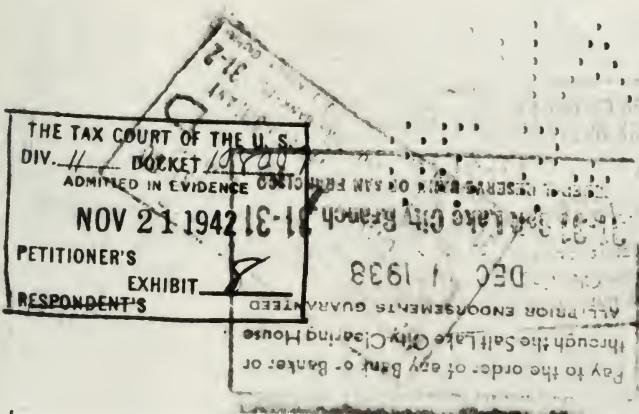
100	shares	common	stock	of	Byron	Jackson	Co.,	Cert.	B25813		
100	"	"	"	"	"	"	"	"	B26187		
100	"	"	"	"	"	"	"	"	9759		
100	shares	1st	pf.	Pacific	Gas	&	Electric	Co.,	Cert.	5½%	C6192
100	"	"	"	"	"	"	"	"	"	5½%	C6193
100	"	"	"	"	"	"	"	"	"	6%	25690
100	"	"	"	"	"	"	"	"	"	6%	25691
100	"	"	"	"	"	"	"	"	"	6%	25692

[Endorsed]: U.S.T.C. Filed Nov. 21, 1942

SAN JOSE, CAL. *Wm. E* 1938 No. *12*

THE FIRST NATIONAL BANK OF SAN JOSE, CAL. *90-78* *12*

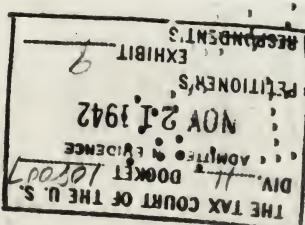
PAY TO
THE ORDER OF *Ward Koch* *\$1500 =*
= Fifteen hundred *DOLLARS*



SAN JOSE, CAL. *Sept 21st 1938* No. *12*

THE FIRST NATIONAL BANK OF SAN JOSE, CAL. *90-78* *12*

PAY TO
THE ORDER OF *Ralph Swick* *\$500.00*
Five hundred *DOLLARS*



842-842

In the U. S. Circuit Court of Appeals
for the Ninth Circuit

B.T.A. Docket No. 108007

In the Matter of the Estate of
ADOLPH J. KOCH, George A. Koch, Executor,
Petitioner on Review,
vs.

GUY T. HELVERING, Commissioner of Internal
Revenue,
Respondent on Review.

**PETITION FOR REVIEW AND ASSIGN-
MENTS OF ERROR**

To The Honorable Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Now comes George Koch, Executor of the Estate
of George A. Koch, by his attorney Gerald S.
Chargin, Esq. of San Jose, California and respect-
fully shows:

I.

JURISDICTION

That the petitioner on review is the duly ap-
pointed, qualified and acting executor of the Estate
of Adolph J. Koch, deceased (hereinafter referred
to as the taxpayer) and his address is Hotel
Durant, Durant and Bowditch Streets, Berkeley,
California; that the respondent on review is [280]
the duly appointed, qualified and acting Commis-
sioner of Internal Revenue (hereinafter referred

to as the Commissioner) under the authority of the laws of the United States; that the taxpayer filed a federal estate tax return on October 19, 1939 with the Collector of Internal Revenue for the first district of California, which office is within the jurisdiction of this Honorable Court; that the Court in which the review of this case is sought is the United States Circuit Court of Appeals for the Ninth Circuit.

Taxpayer files this petition for review pursuant to the provisions of sections 1141 and 1142 of the Internal Revenue Code.

II.

NATURE OF CONTROVERSY

The nature of the controversy is as follows, to wit:

This proceeding involves a deficiency in federal estate tax of \$22,544.18. Respondent determined that certain transfers made by the decedent within two years prior to his death of property having an aggregate value of \$204,442.51 were made in contemplation of death and included this amount in the gross estate of decedent under sections 811 (c) and 811 (d) of the Internal Revenue Code.

The decedent Adolph J. Koch died on June 29, 1939 at the age of 84 years of age. On December 20, 1938 he had made a gift in trust to his grandson Ralph of properties valued on the date of his death at \$79,001.53 for the purpose of making the boy absolutely independent of his stepmother and father and to make sure that he got an education at Stan-

ford University and could later establish himself in business. This gift in trust under section 2280 of the California Civil Code was subject [281] to a power of the decedent to revoke the trust since the trust was not made specifically irrevocable. During the month of January 1939 he made further gifts to Ralph valued on the date of his death at \$21,000. On those same occasions he made several gifts of properties outright to his son George valued at \$79,290.98 and \$21,000, respectively to equalize the gifts to the grandson and in pursuance of a long standing policy of liberal dealing with his son.

The decedent paid federal gift taxes on these gifts in the amount of \$7,547.06 for 1938 and \$5,374.12 for 1939. After making these gifts, the decedent had cash and properties left of an aggregate value of \$142,605.39.

Petitioner on review contends that these gifts were not made in contemplation of death, that the decedent who was in good health for a man of that age made the gifts because of motives associated with life which he disclosed in his statements to his closest associates and relative.

The Respondent and this Court have held that the gifts were "substitutes for testamentary dispositions of decedent's property" and have required their inclusion in the gross estate of decedent with a resultant deficiency of \$22,544.18.

III.

ASSIGNMENTS OF ERROR

The taxpayer, being aggrieved by the findings of facts and conclusions of law contained in the decision of the United States Tax Court and by its final order determining a deficiency in Federal estate tax in the amount of \$22,544.18 desires to obtain a review by the United States Circuit Court of Appeals for the Ninth Circuit. [282]

The taxpayer's assignments of error are as follows:

(1) The Court erred in that there was no substantial evidence to sustain the finding that the transfers were made in contemplation of death.

(2) The Court erred in that the facts found do not sustain the conclusions of law and the decision which it reached.

(3) The Court erred in that it incorrectly applied the law applicable to the facts.

(4) The Court erred in failing to find as a fact that decedent reserved a power to change, alter, amend and revoke the trust for the grandson Ralph.

(5) The Court erred in that it made inadequate findings of fact in the following respects:

(a) The Court erred in failing to find as a fact that the decedent both before and when the gifts were made told his attorney, his son, his house-keeper and others that he was making the gift to his grandson Ralph because he wanted the boy to be independent of his stepmother and father and so that he could go to Stanford and later go into business.

(b) The Court erred in failing to find as a fact that the decedent both before and when the gifts were made told his attorney, his son, his house-keeper and others that he was making the gift to his son George because he wanted to equalize the gift to his grandson Ralph and for George to have as much as he had given Ralph.

(c) The Court erred in failing to find as a fact that there had been family conflicts between the decedent's grandson and his stepmother and between the decedent and the boy's stepmother which had made decedent bitter toward the boy's stepmother. [282a]

(d) The Court erred in failing to find as a fact that the decedent bought a new car in 1938 and applied for a license to drive the car which he received and that he then drove the car around both alone and with his friends, on one occasion at least driving from San Jose to San Francisco to see his son.

(e) The Court erred in failing to find during 1938 and 1939 the decedent was very active at the meetings of the Finance Committee of the San Jose Building and Loan Association and went out and examined the properties on which loans were to be made.

(f) The Court erred in failing to find that the decedent at 82 years of age had gone back to active participation as a Director and Vice President of the San Jose Building and Loan Association at the request of the Board of Directors.

(g) The Court erred in failing to find that on

December 21, 1938, the day after he had made two of the gifts, he attended a meeting of the Directors of the San Jose Building and Loan Association at which he made a motion to accept repayment of a loan totaling over \$500,000 without the payment of a penalty for prepayment, that he led the discussion and the proposal was carried.

(h) The Court erred in failing to find that if the decedent did suffer a stroke on May 18, 1938 he was not informed of the fact by the attending physician or any one else and that he never knew he had suffered one.

(i) The Court erred in failing to find that the decedent declared and believed that he would live to be a hundred years of age and would outlive his son-in-law and the others.

(j) The Court erred in failing to find that the decedent up to date of his death attended personally to all the details [282b] of his business affairs, purchased stocks and bonds, drew his own checks, paid taxes, etc.

(6) The Court erred in finding as a fact that on May 18, 1938 the decedent had a paralytic stroke.

(7) The Court erred in finding that the decedent was pretty much of an invalid at any time as a result of the automobile injury or the alleged paralytic stroke or from any other cause.

(8) The Court erred in finding as a fact that the transfers by the decedent were made in contemplation of death.

(9) The Court erred as a matter of law in hold-

ing that these transfers were made in contemplation of death.

(10) The Court erred as a matter of law in completely disregarding the decedent's own declarations as to the reasons he was making the gifts.

(11) The Court erred in failing to find that these transfers were made through motives associated with life.

(12) The Court erred in entering its final order of redetermination on April 14, 1943 that there is a deficiency in estate tax of \$22,544.18.

Wherefore, taxpayer petitions that the decision of the Tax Court be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit, that a transcript of record be prepared in accordance with the rules of said Court and transmitted to the Clerk of said Court for filing and that proper action be taken to the end that the errors complained of may be reviewed by said Court and the findings, decision, opinion and order of the Tax Court reversed and set aside.

GERALD S. CHARGIN

Attorney for Taxpayer

First National Bank Building,
San Jose, California

[Endorsed]: U.S.T.C. Filed June 29, 1943 [283]

State of California

Santa Clara County—ss.

Gerald S. Chargin being duly sworn says that he is the attorney for the taxpayer herein and as such is duly authorized to verify the foregoing petition for review; that he has read said petition

and is familiar with the contents thereof, that said petition is true of his own knowledge except as to matters therein alleged as information and belief, and as to those matters he believes it to be true.

GERALD S. CHARGIN

Sworn and subscribed to before me this 21st day of June, A. D. 1943.

[Seal]

VICTOR A. CHARGIN

Notary Public [284]

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR
REVIEW

To J. P. Wenchel
Chief Counsel
Bureau of Internal Revenue
Washington, D. C.

You are hereby notified that George A. Koch, Executor of the Estate of Adolph J. Koch, did, on the 29th day of June 1943 file with the Clerk of the U. S. Tax Court at Washington, D. C. a petition for review by the U. S. Circuit Court of Appeals for the Ninth Circuit of the decision of the Tax Court heretofore rendered in the above-entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 29th day of June, A. D. 1943.

GERALD S. CHARGIN

First National Bank Bldg.,
San Jose, Calif.

Service of copy of petition for review, praecipe for record, and statement of points acknowledged June 29, 1943.

J. P. WENCHEL

Atty for Respondent.

[Endorsed]: U.S.T.C. Filed June 29, 1943. [285]

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS

Now comes George A. Koch, Executor of the Estate of Adolph J. Koch, the Petitioner on review herein by his attorney Gerald S. Chargin and hereby asserts the following errors on which he intends to rely on this review: [286]

The taxpayer's assignments of error are as follows:

(1) The Court erred in that there was no substantial evidence to sustain the finding that the transfers were made in contemplation of death.

(2) The Court erred in that the facts found do not sustain the conclusions of law and the decision which it reached.

(3) The Court erred in that it incorrectly applied the law applicable to the facts.

(4) The Court erred in failing to find as a fact

that decedent reserved a power to change, alter, amend and revoke the trust for the grandson Ralph.

(5) The Court erred in that it made inadequate findings of fact in the following respects:

(a) The Court erred in failing to find as a fact that the decedent both before and when the gifts were made told his attorney, his son, his house-keeper and others that he was making the gift to his grandson Ralph because he wanted the boy to be independent of his stepmother and father and so that he could go to Stanford and later go into business.

(b) The Court erred in failing to find as a fact that the decedent both before and when the gifts were made told his attorney, his son, his house-keeper and others that he was making the gift to his son George because he wanted to equalize the gift to his grandson Ralph and for George to have as much as he had given Ralph.

(c) The Court erred in failing to find as a fact that there had been family conflicts between the decedent's grandson and his stepmother and between the decedent and the boy's stepmother which had made decedent bitter toward the boy's stepmother. [287]

(d) The Court erred in failing to find as a fact that the decedent bought a new car in 1938 and applied for a license to drive the car which he received and that he then drove the car around both alone and with his friends, on one occasion at least driving from San Jose to San Francisco to see his son.

(e) The Court erred in failing to find during 1938 and 1939 the decedent was very active at the meetings of the Finance Committee of the San Jose Building and Loan Association and went out and examined the properties on which loans were to be made.

(f) The Court erred in failing to find that the decedent at 82 years of age had gone back to active participation as a Director and Vice President of the San Jose Building and Loan Association at the request of the Board of Directors.

(g) The Court erred in failing to find that on December 21, 1938, the day after he made two of the gifts, he attended a meeting of the Directors of the San Jose Building and Loan Association at which he made a motion to accept repayment of a loan totaling over \$500,000 without the payment of a penalty for prepayment, that he led the discussion and the proposal was carried.

(h) The Court erred in failing to find that if the decedent did suffer a stroke on May 18, 1938 he was not informed of the fact by the attending physician or any one else and that he never knew he had suffered one.

(i) The Court erred in failing to find that the decedent declared and believed that he would live to be a hundred years of age and would outlive his son-in-law and the others.

(j) The Court erred in failing to find that the decedent up to the date of his death attended personally to all the details of his [288] business af-

fairs, purchased stocks and bonds, drew his own checks, paid taxes, etc.

(6) The Court erred in finding as a fact that on May 18, 1939 the decedent had a paralytic stroke.

(7) The Court erred in finding that the decedent was pretty much of an invalid at any time as a result of the automobile injury or the alleged paralytic stroke or from any other cause.

(8) The Court erred in finding as a fact that the transfers by the decedent were made in contemplation of death.

(9) The Court erred as a matter of law in holding that these transfers were made in contemplation of death.

(10) The Court erred as a matter of law in completely disregarding the decedent's own declarations as to the reasons he was making the gifts.

(11) The Court erred in failing to find that these transfers were made through motives associated with life.

(12) The Court erred in entering its final order of redetermination on April 14, 1943 that there is a deficiency in estate tax of \$22,544.18.

The Court erred in that its decision was contrary to law.

GERALD S. CHARGIN
Attorney-for-Petitioner
First National Bank Build-
ing, San Jose, California

[Endorsed]: U.S.T.C. Filed June 29, 1943.

[288a]

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD
OF REVIEW

To the Clerk of the U. S. Tax Court:

You will please prepare, transmit and deliver to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the Circuit Court of Appeals for the Ninth Circuit, heretofore filed by the taxpayer.

[289]

1. Docket entries of all proceedings before the Board.
2. Pleadings before the Board:
 - (a) Petition including copy of deficiency letter.
 - (b) Answer.
4. Findings of fact, memorandum, opinion, decision of Tax Court dated April 13, 1943 and its order of redetermination dated April 14, 1943.
5. Complete transcript of the evidence adduced and the proceedings before the Tax Court on the hearing of the case on November 21, 1942.
6. Taxpayer's petition for review together with proof of service of notice of filing petition for review.
7. Statement of points to be relied upon.
8. The designation of contents of record on review.

Said transcript is to be prepared, certified and

transmitted as required by law and the rule of the United States Circuit Court of Appeals for the Ninth Circuit.

GERALD S. CHARGIN
Attorney for Petitioner on
Review
First National Bank Build-
ing, San Jose, California.

[Endorsed]: U.S.T.C. Filed June 29, 1943. [290]

The Tax Court of the United States
Washington

Docket No. 108007

ESTATE OF ADOLPH J. KOCH, GEORGE A.
Koch, Executor,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CERTIFICATE

I, B. D. Gamble, clerk of The Tax Court of the United States do hereby certify that the foregoing pages, 1 to 290, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praeclipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand

and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 15th day of July, 1943.

[Seal]

B. D. GAMBLE,

Clerk, The Tax Court of the
States.

[Endorsed]: No. 10506. United States Circuit Court of Appeals for the Ninth Circuit. George A. Koch, Executor of the Estate of Adolph J. Koch, Deceased, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of Record. Upon Petition to Review a Decision of The Tax Court of the United States.

Filed July 27, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION RESPECTING THE PRINTING OF THE RECORD ON REVIEW

It is hereby stipulated by the parties to the above-entitled cause, by their counsel of record, that in the printing of the record Petitioner's Exhibits 2 to 11, both inclusive, and the following parts of the Official Report of the Proceedings before the United States Board of Tax Appeals (now the Tax Court of the United States) shall be omitted:

1. Pages 1 to 5, inclusive, and Lines 1 to 20, inclusive of Page 6.
2. Line 14, Page 16, to and including Line 11, Page 17.
3. Line 5, Page 28, to and including Line 13, Page 29.
4. Lines 24 and 25 of Page 43, Page 44, and Lines 1 to 14, inclusive, of Page 45.
5. Lines 18 to 25, inclusive, of Page 45.
6. Lines 5 to 13, inclusive, of Page 53.
7. Line 15, Page 54, to and including Line 19, Page 55.
8. Line 12, Page 69, to and including Line 11 of Page 70.
9. Line 16, Page 73, to and including Line 7 of Page 74.
10. Lines 12 to 20, inclusive, of Page 80.
11. Line 2, Page 83, to and including Line 7 of Page 84.
12. Lines 20 to 25, inclusive, Page 114, Pages 115, 116 and 117.

13. Lines 1 to 7, inclusive, of Page 118.
14. Lines 19 to 25, inclusive, Page 140 and Line 1, Page 141.
15. Lines 2 to 6 and 11 to 25, both inclusive, of Page 142, Page 143, and Lines 1 and 2 of Page 144.
16. Lines 1 to 17, inclusive, and Line 25 of Page 165, and Pages 166, 167, 168 and 169.

GERALD S. CHARGIN

Attorney for Petitioner on
Review.

SAMUEL O. CLARK JR.

Assistant Attorney General

J. P. WENCHEL

J. P. Wenchel,

Chief Counsel,

Bureau of Internal Revenue.

Attorneys for Respondent on
Review.

[Endorsed]: Filed Aug. 25, 1943. Paul P.
O'Brien, Clerk.

